**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

| | | |
|---|---|---|
| **LOWE'S HOME CENTERS, LLC** | **v.** | **BOARD OF ASSESSORS OF THE TOWN OF WEST BRIDGEWATER** |

Docket Nos. F327603
F329002
F335557

Promulgated:
December 3, 2025

These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of West Bridgewater ("appellee" or "assessors") to abate taxes on certain real estate located in the Town of West Bridgewater and leased to Lowe's Home Centers, LLC ("appellant"). The assessed owner was 379 West Bridgewater LLC for fiscal years 2015, 2016, and 2018 ("fiscal years at issue").

Commissioner Elliott heard these appeals. Chairman DeFrancisco and Commissioners Good, Metzer, and Bernier joined him in the decisions for the appellant.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.34.

*Daniel P. Zazzali,* Esq., *Michael D. Benak,* Esq., *and Nicholas W. Allen,* Esq., for the appellant.

*Thomas Gay, Jr.,* Esq., and *Daniela Nilsson*, Assessor, for the appellee.

## FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits entered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

### I. Introduction and jurisdiction

On January 1, 2014, January 1, 2015, and January 1, 2017, the appellant was the lessee of a 138,053-square-foot, big-box anchor space ("subject building") with an accompanying 21,750-square-foot garden center ("garden center"), a 5,583-square-foot restaurant space ("restaurant space"), a 2,807-square-foot bank space ("bank space"), and a cell phone tower ("cell tower"), all situated on a 26.44-acre parcel (collectively, "subject property").

The subject building was constructed circa 2007 and operated as a Lowe's home improvement retail store ("Lowe's") during all relevant time periods.

The following table details jurisdictional information for each of the fiscal years at issue. Tax amounts are exclusive of the Community Preservation Act ("CPA") surcharge:

| | Fiscal Year 2015 | Fiscal Year 2016 | Fiscal Year 2018 |
|---|---|---|---|
| Assessed Value | $17,089,500 | $17,091,300 | $17,263,000 |
| Tax Rate | $28.78 | $29.13 | $28.58 |
| Tax Amount | $491,835.81 | $497,869.57 | $493,376.54 |
| Abatement Application Filed | 1/29/15 | 1/29/16 | 1/30/18 |
| Timely Payments Without Interest | Yes | Yes | Yes |
| Denial | 5/20/15 (an extension to act on the abatement application was granted by the appellant on 4/27/15) | 2/17/16 | 2/21/18 |
| Petition | 6/22/15 | 3/23/16 | 5/21/18[1] |

[1] While the petition was stamped as having been docketed by the Board on May 23, 2018, the envelope containing the petition bore a United States Postal Service postmark of May 21, 2018. Pursuant to G.L. c. 58A, § 7, the Board ruled that the date of the postmark was the date of filing.

Based upon this information, the Board found and ruled that it had jurisdiction to hear and decide these appeals for the fiscal years at issue.

**II. The parties' stipulations and unresolved issues**

The parties stipulated to the following, as of each of the relevant valuation dates: that the income approach is the most appropriate method of valuation for the subject property; the vacancy and collection loss factor is 8 percent; the expenses amount to be deducted is $200,000; the capitalization rate is 8.41 percent; and the combined aggregate value of the restaurant space, bank space, and cell phone tower is $2,400,000. The sole issues before the Board were (1) the rent to be attributed to the subject building and (2) the rent, if any, to be attributed to the garden center.

**A. The appellant's case**

The appellant presented its case primarily through the testimony and opinion letter of Benjamin Starr, whom the Board qualified as an expert real estate broker and an expert in retail real estate in the New England states; the testimony and appraisal report of William McLaughlin, whom the Board qualified as an expert witness in commercial retail real estate valuation**;** and the rebuttal testimony and opinion letter of David Lennhoff, whom the Board qualified as an expert appraiser.

***i. Mr. Starr's testimony and opinion letter***

In Mr. Starr's experience, potential retailers are looking at population, density, median household income, the critical mass or density of other national name retailers nearby, and the sales figures of those retailers, as well as traffic counts and visibility on the site.

He described the subject property's location as a tertiary market "where the retailer would be a pioneer of almost no track record in those markets." He opined on the "almost complete absence of any critical mass of regional retail" in the location of the subject property. He called the population density within the locale of the subject property "improbably light for eastern New England."

On cross examination, he admitted that the subject property is located within close proximity to the on and off ramp of Route 24, that Route 24 is a major highway in the area of the subject property, and that access to the subject property is at a signaled intersection, with signage, and visible from Route 106.

Regarding the garden center, he testified that in his experience very few retailers have a need for such a space. He named Home Depot, Lowe's, and Tractor Supply among those that would. He noted that Tractor Supply is a retailer with an active garden space that refuses to include the square footage of a garden space in the rentable area – it pays neither a base rent nor net rent on the additional uncovered space. If the appellant were to vacate the subject property, he found it unlikely that the next user would utilize the garden center and found it likely that the garden center would be demolished. He added that conversion of the garden center "to enclosed retail would likely require additional zoning variances, including for parking as the subject property [did] not meet the current zoning requirements."

Mr. Starr testified to the growth of big-box retailers, including Lowe's, through the 1990s, and to the ending of that growth in 2008 into 2009, with little growth since then of these types of retailers. In terms of leases signed before the 2008 time period, he testified

that “[i]t was a different time. It was a competitive race among multiple category killers, big box retailers in each category. After that . . . time frame, it was no longer that battle.”

***ii. Mr. McLaughlin’s testimony and appraisal report***

Mr. McLaughlin agreed with Mr. Starr’s conclusion that the subject property is located in a tertiary market. He noted that the subject property is close to Route 24, which provides average to good access to the subject property, but that the neighborhood lacks additional retail to draw patrons to the subject property and drive traffic patterns to that market. In his opinion the strengths or weaknesses of the market can drive what a retailer would pay for rent.

Mr. McLaughlin determined that the highest and best use of the subject property was as a large-scale, big-box retail building as it was improved during the relevant time periods.

In his income-capitalization approach, Mr. McLaughlin’s first step was to determine the market rent of the subject building occupied by Lowe’s. In searching for comparable properties, he looked at size, noting that smaller-sized comparable properties might generate higher rent per square foot than the subject property. He also looked at the location of properties, access, visibility, collection of other retailers in the immediate area, timing in terms of when leases commenced, and the use of the properties.

He agreed with Mr. Starr that most tenants do not pay for garden spaces and only pay for the improved space with interior heating and cooling, not outdoor space. He noted that the garden center does not have heating and is exposed to the elements. He did not attribute any additional rent to the garden center beyond the rent attributed to the subject building. Mr. McLaughlin also agreed with Mr. Starr’s testimony regarding a change in the

market between 2008 through 2011, and that it would be a mistake to include comparable lease transactions dating prior to 2008, unless there were no other comparable properties available.

Mr. McLaughlin ultimately selected eight comparable properties for which he was able to verify details: (1) Burlington Stores at the Nashua Mall Plaza in Nashua, New Hampshire; (2) At Home at the Dedham Mall in Dedham, Massachusetts; (3) At Home at the Rhode Island Mall in Warwick, Rhode Island; (4) At Home at the site of a former Sam's Club in Seekonk, Massachusetts; (5) Round One at the Silver City Galleria in Taunton, Massachusetts; (6) Bass Pro Outdoor World at the site of a former Lowe's in Hooksett, New Hampshire; (7) Kohl's at the Shopper's World in Framingham, Massachusetts; and (8) Kohl's at the Milford Plaza in Milford, Massachusetts. Lease commencement dates for his comparable properties ranged from April 2013 to February 2019, with lease terms ranging from five to fifteen years. The sizes of the eight comparable properties ranged from 62,676 square feet to 121,515 square feet. Rents ranged from $4.40 to $10.06 per square foot, on a triple net basis.

With adjustments, Mr. McLaughlin's rents ranged from $5.52 to $7.95 per square foot. He concluded a $7 per-square-foot rent on a triple net basis for the subject building was appropriate, with no additional rent for the garden space.

**B. The appellee's case**

The appellee presented its case primarily through the testimony and appraisal report of Shaun Fitzgerald,[2] a certified general real estate appraiser whom the Board qualified as an expert witness.

[2] The appraisal report was co-authored by Stephen McCarthy, who was the only signatory on the report. By affidavit, Mr. Fitzgerald attested that it was his "belief that I likely planned to sign the report between the

***i. Mr. Fitzgerald's testimony and appraisal report***

Mr. Fitzerald testified that retailers such as Lowe's and Home Depot were in business continuously through the financial crisis in 2008, with a bit of a backoff on construction and renovation from 2008 to 2010, and that they were "booming through the recent pandemic."

He noted that the vast majority of Mr. McLaughlin's comparables were malls, not lumber and home renovation properties, and that the majority were built in the 1960s and 1970s. He also noted that several of Mr. McLaughlin's comparables were "former something else," citing as an example the Dedham Mall being transformed into a power center.

He disagreed that the garden center had no value, noting that in addition to selling seasonal items, typically a garden space holds fencing, concrete blocks, and pavers, things that can be stored outdoors, and that these garden spaces are essential to the business of stores such as Lowe's.

Mr. Fitzgerald found that the highest and best use of the subject property was its continuing use as a retail property during the relevant time periods.

Mr. Fitzgerald's income approach included two comparable properties located in Massachusetts: (1) a BJ's Wholesale Club in Haverhill - a 119,598-square-foot property on 17.26 acres, built in 2004, with a twenty-year lease at $10.75 per square foot on a triple net basis that commenced in August 2007 with rental increases in five-year increments; and (2) a Kohl's in Stoughton – an 88,174-square-foot property on twelve

printing company and the Post Office as I typically do," but that "because Mr. McCarthy lives in West Bridgewater, I may have asked that he collect the report at the printing company and hand deliver it to West Bridgewater Town Hall" and that "[a]s a result, the only signatory on the bound report is that of Mr. McCarthy." Mr. McCarthy was not present to testify.

acres, built to suit in 2003, with a twenty-year lease at $14.10 per square foot on a triple net basis that commenced in April 2004. Taking into account these leases, he concluded a market rent of $11.50 per square foot for the subject building and $7 per square foot for the garden center.

In terms of the commercial real estate market in 2008 with leases in effect prior to 2008, Mr. Fitzgerald testified that home improvement stores have been “solid.” He opined that “they did pull back somewhat on construction and renovation, residential in particular,” but that “[c]ommercial stayed relatively stable because the leases are such long-term leases with regard to construction, with regard to leases of retail property.”

On cross examination, Mr. Fitzgerald acknowledged that he had “limited access to lease amounts. I know about properties that are leased. There’s no public record on leases, and they are very difficult to find. So when I find them, I use them.” When questioned about the Kohl’s comparable he used in his analysis, Mr. Fitzgerald testified that his files had not contained the actual lease, only information from a broker familiar with the transaction. He admitted that his conclusion would have been impacted if the landlord had given Kohl’s a lump sum contribution to construct the building. The lease underlying Mr. Fitzergald’s Kohl’s comparable was subsequently entered into evidence and established that the landlord provided Kohl’s with a $4,312,000 contribution. When questioned about the BJ’s comparable he used in his analysis, Mr. Fitzgerald similarly testified that he had not seen the actual lease and that he had received information from a real estate agent. When questioned about the garden center and his conclusion of a $7 per-square-foot rent, Mr. Fitzgerald admitted that there was no data in his appraisal report to support this figure.

***ii. Mr. Lennhoff's rebuttal testimony***

Mr. Lennhoff's testimony and opinion letter chiefly aspired to rebut the testimony and appraisal report of Mr. Fitzgerald. He critiqued the lack of analysis on the two leases selected by Mr. Fitzgerald, opining that "absent a database and the ability to verify and then analyze, the information coming from the comparables would be highly questionable."

He testified to the lack of adjustments made by Mr. Fitzgerald, particularly to account both for the dates of the leases – "They are very old dates" – and the differences in size of the underlying properties compared to the subject building. In his opinion letter, he stated that "the fundamental problem with the income approach in the appraisal under review is that the rental comparables do not meet the criteria of reasonable exposure on the open market and are not arm's length. Both leases were to the original occupant and represent 'first generation' transactions rather than market exposed transactions. Absent consideration of supportable adjustments to equate first generation, leased comparables to the subject market situation, i.e., second generation fee simple interest, these transactions would not be appropriate comparables."

Regarding the garden center, he noted that it is a feature that in his experience "Lowe's likes, Home Depot likes but the market in general won't pay for it." He also expressed concern that Mr. Fitzgerald's "appraisal report shows no evidence whatsoever of whether the market would pay at all or how much in rent it would pay. The conclusion appears without any support."

## III. The Board's findings and rulings

On the basis of the record in its entirety, the Board found and ruled that the appellant met its burden of proving that the subject property was overvalued for each of the fiscal years at issue. In reaching this conclusion, the Board agreed with the parties' experts that the highest and best use of the subject property was its continued use as a retail property as of the relevant assessment dates for the fiscal years at issue, and that the income approach was the most appropriate methodology to value the subject property, as stipulated to by the parties.

The Board agreed with Mr. Starr's and Mr. McLaughlin's opinions that no additional rent should be attributed to the garden center, finding their testimony credible concerning the likelihood that most tenants do not and would not pay for garden spaces and pay only for the actual, improved space with interior heating and cooling, not outdoor space. Turning to the subject building, the Board gave no weight to Mr. Fitzgerald's comparables. His admission of limited access to lease information did not inspire confidence, and his two comparables were both remote in time to the fiscal years at issue. Additionally, his Kohl's comparable failed to take into account a lump sum contribution provided to Kohl's by the landlord, a fact that Mr. Fitzgerald admitted would have impacted his conclusion. While the Board found Mr. McLaughlin's comparables to be persuasive, it declined to adopt his conclusion of a $7 per-square-foot rent for the subject building. The Board found that an $8.50 per-square-foot rent for the subject building appropriately reflected the location of the subject property, within close proximity to a major highway and accessible via a signaled intersection, with signage and visible from Route 106.

Taking into account the parties' stipulations of market rent for the bank space, market rent for the restaurant space, cell tower revenue, vacancy and collection loss factor, expenses, and capitalization rate, the Board derived the following amounts for the subject property when applying an $8.50 per-square-foot market rent to the subject building:

| | Fiscal Year 2015 | Fiscal Year 2016 | Fiscal Year 2018 |
|---|---|---|---|
| Gross potential income ($8.50 x 138,053 sq. ft.) | $1,173,451 | $1,173,451 | $1,173,451 |
| Vacancy (8%) | $93,876 | $93,876 | $93,876 |
| Effective gross income | $1,079,575 | $1,079,575 | $1,079,575 |
| Expenses | $200,000 | $200,000 | $200,000 |
| NOI | $879,575 | $879,575 | $879,575 |
| Cap. Rates | .0841 | .0841 | .0841 |
| Value indications | $10,458,679 | $10,458,679 | $10,458,679 |
| Rounded | $10,500,000 | $10,500,000 | $10,500,000 |
| Contributory value of bank/restaurant/cell tower | $2,400,000 | $2,400,000 | $2,400,000 |
| Total value | $12,900,000 | $12,900,000 | $12,900,000 |
| Assessed Value | $17,089,500 | $17,091,300 | $17,263,000 |
| Overvaluation | $4,189,500 | $4,191,300 | $4,363,000 |

Based on the above findings, the Board issued decisions for the appellant for each of the fiscal years at issue, with abatements of $121,779.55, $123,313.49, and $125,941.49, for fiscal years 2015, 2016, and 2018, respectively, for the subject property, inclusive of the CPA surcharge.

## OPINION

Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). A taxpayer has the burden of proving that the property at issue has a lower value than its assessed value. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to abatement of the tax." ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). An assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***Schlaiker***, 365 Mass. at 245.

In determining fair cash value, all uses to which the property was or could reasonably be adapted on the relevant assessment dates should be considered. ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). "In determining the property's highest and best use, consideration should be given to the purpose for which the property is adapted." ***Peterson v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2002-573, 617 (citation omitted), *aff'd in relevant part*, 62 Mass. App. Ct. 428 (2004). In the present appeals, the Board agreed with the parties' experts that the subject property's highest and best use was its continued use as a retail property.

Generally, real estate valuation experts, Massachusetts courts, and the Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment***

***Auth.***, 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation . . . ." ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986). The use of the income-capitalization approach is appropriate when reliable cost and market-sales data are not available. ***Assessors of Weymouth v. Tammy Brook Co.***, 368 Mass. 810, 811 (1975); ***Assessors of Lynnfield v. New England Oyster House, Inc.***, 362 Mass. 696, 701-02 (1972). It is also recognized as an appropriate technique to use for valuing income-producing property. ***Taunton Redevelopment Assocs. v. Assessors of Taunton***, 393 Mass. 293, 295 (1984). In these appeals, the Board found and ruled, as stipulated to by the parties, that the income-capitalization approach was the most appropriate method to value the subject property.

"The direct capitalization of income method analyzes the property's capacity to generate income over a one-year period and converts the capacity into an indication of fair cash value by capitalizing the income at a rate determined to be appropriate for the investment risk involved." ***Olympia & York State Street Co. v. Assessors of Boston***, 428 Mass. 236, 239 (1998). "[I]t is the net income that the property *should* be earning, not necessarily what it actually earns, that is the figure that should be capitalized." ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 436 (2004) (emphasis in original). Accordingly, the income stream used in the income-capitalization method must reflect the property's earning capacity or economic rental value. ***Pepsi-Cola Bottling Co.***, 397 Mass. at 452.

Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted to reflect reasonable operating expenses, they are indicative of the subject property's earning

capacity. *See* ***Correia v. New Bedford Redevelopment Auth.***, 5 Mass. App. Ct. 289, 293-94 (1977), *aff'd on other grounds*, 375 Mass. 360 (1978). Vacancy rates must also be market based when determining fair cash value. ***Olympia & York State St. Co.***, 428 Mass. at 239. After accounting for vacancy and rent losses, net operating income is obtained by deducting the landlord's appropriate expenses. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 610 (1984). The expenses should also reflect the market. *See* ***Olympia & York State St. Co.***, 428 Mass. at 239. Lastly, the capitalization rate selected should reflect the return necessary to attract investment capital and account for real estate taxes borne by the landlord by use of an effective tax factor. ***Taunton Redevelopment Assocs.***, 393 Mass. at 295.

In reaching its opinion of fair cash value, the Board is not required to believe the testimony of any witness or to adopt any particular method of valuation that an expert witness suggested. ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."). Rather, the Board can accept those portions of the evidence that, in the Board's determination, have more convincing weight. ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 473 (1981); ***New England Oyster House***, 362 Mass. at 702. The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." ***Assessors of Quincy v. Boston Consol. Gas Co.,*** 309 Mass. 60, 72 (1941). *See also* ***New Boston Garden Corp.,*** 383 Mass. at 473.

In ***Boston Consol. Gas Co.,*** 309 Mass. at 72, the Supreme Judicial Court ruled that "the conclusion reached by the board . . . did not coincide with the figure given by any witness, but it does not follow . . . that this conclusion was, therefore, unsupported by the evidence." The Court noted that "[t]he board was not required to believe the testimony of any particular witness but it could accept such portions of the evidence as appeared to have the more convincing weight. . . . The board could select the various elements of value as shown by the record and from them form, as it properly did, its own independent judgment." ***Id***. *See also* ***New Boston Garden Corp.,*** 383 Mass. at 473 ("The essential requirement is that the board exercise judgment.").

Turning to the present appeals, the parties stipulated to – for purposes of an income approach for each of the fiscal years at issue – the combined aggregate value of the restaurant space, the bank space, and the cell phone tower; a vacancy and collection loss factor; the amount of expenses to be deducted; and a capitalization rate. The remaining issues before the Board were the market rent to be attributed to the subject building and the market rent, if any, to be attributed to the garden center.

In making its determination on these issues, the Board considered the testimony, reviewed the record in its entirety, and analyzed the various comparables presented by the parties' experts. ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass 296, 300 (1984). The Board found and ruled that for purposes of an income approach, the market rent for the subject building was $8.50 per square foot for each of the fiscal years at issue, and that no additional rent was to be attributed to the garden center. While the Board gave no weight to Mr. Fitzgerald's comparables and declined to fully adopt Mr. McLaughlin's conclusion of a market rent for the subject building, the record

in the aggregate afforded the Board with sufficient and probative evidence to form its own judgment. *See* ***Liberty Norfolk Dev. II, LLC v. Assessors of Norfolk***, 90 Mass. App. Ct. 1110 (2016) (decision under Rule 1:28).

Application of the Board's determination of market rent for the subject building and the parties' stipulated figures resulted in a fair cash value of $12,900,000 for the subject property for each of the fiscal years at issue. This value was lower than the assessed value of the subject property for each of the fiscal years at issue. Accordingly, the Board found and ruled for the appellant for each of the fiscal years at issue, granting abatements of $121,779.55, $123,313.49, and $125,941.49 for fiscal years 2015, 2016, and 2018, respectively, for the subject property, inclusive of the CPA surcharge.

**THE APPELLATE TAX BOARD**

**By:** _____
**Mark J. DeFrancisco, Chairman**

**A true copy,**

**Attest:** _____
**Clerk of the Board**