

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

**NHP PROPERTIES BUSINESS TRUST
n/k/a/ CCP PROPERTIES**

V.

**BOARD OF ASSESSORS OF THE
TOWN OF EAST LONGMEADOW**

Docket No. F336991

Promulgated:
June 8, 2020

This is an appeal 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 East Longmeadow ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of East Longmeadow owned by and assessed to NHP Properties Business Trust ("appellant") for fiscal year 2018 ("fiscal year at issue").

Commissioner Metzger heard this appeal and was joined in the decision for the appellee by Chairman Hammond and Commissioners Rose, Good, and Elliott.

These findings of fact and report are made at the request of the appellant pursuant to G.L. 58A, § 13 and 831 CMR 1.32.

Doreen M. Zankowski, Esq. Scott A. McQuilkin, Esq., and Bryan D. Harrison, Esq., for the appellant.

Diane L. Bishop, Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2017, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of an 11.90-acre parcel of land with improvements located at 32 Chestnut Street in East Longmeadow ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$4,726,700 and assessed a tax thereon at the rate of \$20.94 per \$1,000, in the total amount of \$99,966.87, inclusive of a Community Preservation Act Surcharge. The appellant paid the tax due without incurring interest.

In accordance with G.L. c.59, § 59, the appellant timely filed an abatement application with the assessors on January 30, 2018. The appellant received an abatement denial notice dated May 2, 2018, incorrectly indicating that its application had been deemed denied on May 1, 2018 and that the appellant could appeal to the Board within three months of the date its application was deemed denied. Although sent within ten days of the deemed denial of the appellant's application, the appellee's notice was inaccurate and hence void, the deemed-denied date under the circumstances being April 30, 2018. The appellee not having provided the notice of deemed denial required by G.L. c. 59, § 63,

the appellant was entitled to file its petition with the Board under G.L. c. 59, § 65C "within two months after the appeal should have been entered." See **Andersen v. Assessors of Falmouth**, Mass. ATB Findings of Fact and Reports 2013-808, 810-11; **American House, LLC v. Assessors of Greenfield**, Mass. ATB Findings of Fact and Reports 2005-39, 57-58. In accordance with G.L. c. 59, § 65C, the appellant seasonably filed an appeal under the formal procedure with the Board on August 1, 2018.

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

According to the property record card maintained by the appellee, the subject property is improved with a 55,486-square-foot one-story brick nursing home facility dating back to 1985, including a twelve-room addition built in about 2005. For the fiscal year at issue, the assessors valued the facility based on replacement cost, adjusted for depreciation and external obsolescence, to arrive at a building value of \$4,023,800, to which they added the value of the land and certain extras, including paving, to arrive at the assessed value of the subject property. The property record card also indicates that the assessed value of the subject property has been the topic of prior settlements, including most recently a valuation settlement of \$4,673,000 for fiscal year 2011.

The appellant presented its case through its attorney. The appellant offered into evidence its Nursing Facility Cost Report (HCF-1) for the calendar year 2016, prepared for the Massachusetts Center for Health Information and Analysis ("Cost Report"). According to the Cost Report, the appellant's facility was licensed for 135 skilled nursing beds and admitted private pay, managed care, Medicare, and Medicaid patients, and patients for whom the payer was stated to be Senior Care Options, PACE, Veteran's Affairs, or other public source.

Referring to the approach to the valuation of a skilled nursing facility used by this Board in **2101 Washington Street, LLC v. Assessors of the City of Newton**, Mass. ATB Findings of Fact and Reports 2016-122, the appellant identified certain income and expense information shown in the Cost Report as relevant to a determination of the value of the subject property using an income-capitalization approach to valuation.

Based on these income and expense amounts, an assumed entrepreneurial profit of seven percent, a reserve for furniture, fixtures, and equipment ("FF&E") of \$350 per bed, a five percent real estate reserve, and no revenue adjustment to account for vacancy, the appellant argued that the subject property was worth either \$3,300,000, applying a capitalization rate of ten percent before the tax factor, or \$3,580,000, applying a capitalization rate of nine percent before the tax factor.

The appellant did not offer into evidence an appraisal report prepared by a qualified expert, or any written summary of its verbally presented analysis. Further, in asserting that the relevant starting points for its analysis were certain of the income and expense figures shown on schedules from the appellant's Cost Report, the appellant offered no evidence to establish that these expenses were market expenses, and no discussion of the income shown, other than to indicate that, as actual income, it took into account vacancies.

For their part, and in support of the assessed value for the fiscal year at issue, the assessors essentially rested on the presumed validity of the assessment. They did, however, offer into evidence an income-valuation summary based on information taken from the appellant's Cost Report, which supported the assessed value of the subject property for the fiscal year at issue.

Based on all the evidence, the Board found that the appellant failed to meet its burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The appellant's attorney's verbal valuation presentation, unsupported by an appraisal prepared by a qualified expert, provided an insufficient basis on which the Board could find the subject property to be overvalued.

Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

Assessors are required to assess all real property at its full and 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 in a free and open market will agree if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property has a lower value than that assessed. "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)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayer[] sustain[s] the burden of proving the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before this Board, a taxpayer "may present persuasive evidence of overvaluation either by exposing flaws or errors in the assessors' method of valuation, or by introducing affirmative evidence of value which undermines the assessors'

valuation." **General Electric Co.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the instant case the appellant, applying the income-capitalization methodology that the Board most recently used in **2101 Washington Street, LLC**, at *supra*, sought to establish that the subject property was worth significantly less than its assessed value for the fiscal year at issue. Beyond stating the relevance of this valuation methodology, however, the appellant provided no probative evidence to support its application of the method to the facts at issue in the present appeal.

Without the assistance of expert testimony, an appraisal report, or any valuation analysis by the owner of the facility, the appellant asked the Board to accept a verbal income analysis from the appellant's counsel, together with certain valuation assumptions relied on by the Board in an entirely different matter. The appellant's analysis did not provide competent evidence of the subject property's value for the fiscal year at issue.

It is well-settled that "[t]he value of property . . . [is] a proper matter for expert opinion." **Sheffer v. Rudnick**, 291 Mass. 205, 212 (1935). Valuation based on an income approach "also entails proof of other factors like an appropriate capitalization rate and the 'proper allowance' for vacancy and management, which have been recognized as 'matter[s] of expert judgment and experience in the field of appraisal.'" **Valkyrie Co. v. Assessor**

of Worcester, Mass. ATB Findings of Fact and Reports 2005-407, 2005-416 (quoting *Ruth W. Gottlieb Trusts v. Assessors of Boston*, 4 Mass. App. Tax Bd. Rep. 31, 34 (1984)). Although non-expert witnesses, such as property owners, may testify as to value, they must establish sufficient familiarity with the property and expertise in valuation. See *Salem Traders Way Realty LLC v. Assessors of Salem*, Mass. ATB Findings of Fact and Report 2007-236, 2007-246 (Corporate officer permitted to testify as owner did not possess the requisite expertise to support his opinion of value for an income-producing property). The appellant failed to establish that its counsel was sufficiently familiar with the subject property or that he had the requisite expertise to perform a competent and credible valuation analysis.

The appellant did not introduce credible, affirmative evidence that undermined the assessors' value; nor did it endeavor to expose flaws or errors in the assessors' method of valuation indicated on the property record card. The Board therefore found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue.

Accordingly, the Board decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Chairman

A true copy:

Attest: /s/ William J. Doherty
Clerk of the Board