

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**PATRICK MOTOR MART, INC. v. BOARD OF ASSESSORS OF
THE TOWN OF AUBURN**

Docket Nos.: F322483
 F325681
 F329026

Promulgated:
June 4, 2020

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 Auburn ("appellee" or "assessors") to abate taxes on real estate located in Auburn, owned by and assessed to Patrick Motor Mart, Inc. ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2014, 2015 and 2016. ("fiscal years at issue").

Commissioner Chmielinski heard these appeals. He was joined by Chairman Hammond and Commissioners Scharaffa, Rose, and Good in the decisions for the appellee.

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

Matthew A. Luz, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2013, 2014, and 2015, the relevant assessment dates for the fiscal years at issue, the appellant was the assessed owner of an improved 4.7-acre parcel of mixed-use commercial/industrial property located at 519 Washington Street in Auburn ("subject property"). The assessors valued the subject property at \$2,775,600, \$2,775,800, and \$2,798,400, respectively, for the fiscal years at issue. The appellant timely paid the taxes due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application for each of the fiscal years at issue. The assessors denied the abatement applications and the appellant seasonably filed Petitions Under the Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The appellant presented its case through the testimony and appraisal report of Mr. J. Chet Rogers, whom the Board qualified as an expert witness in commercial real estate appraisal ("appellant's appraiser"). The assessors

presented no witnesses, and after cross-examination of appellant's appraiser, rested on the presumed validity of the contested assessments.

Washington Street, where the subject property is situated, is also known as Route 20, a four-lane road that runs east-west through Auburn. Approximately half a mile north of the subject property is an interchange between interstates I-395 and I-290. Not far beyond the interchange is a group of automobile dealerships.

The subject property, which at all relevant times was operated as an automobile dealership, had approximately 500 feet of frontage on Route 20 and was improved with a 27,781-square-foot building constructed in 1995. The building was well maintained and the property, according to the appellant's appraiser, had nice curb appeal. The building had 7,184 square feet of office space (2,576 on the first floor, and 4,608 on the second), 5,694 square feet of auto-showroom space, and 14,903 square feet of auto-service space.

Operating as a "complete auto dealership," the term the appellant's appraiser used to describe the subject property, the appellant sold new cars, used cars, and auto parts, and also serviced and repaired automobiles. The appellant's appraiser opined that the subject property's

highest and best use was its continued use as a single tenant, complete auto dealership.

The appellant's appraiser, having considered the three most frequently used approaches to value, rejected the cost-reproduction approach. Though he performed a comparable-sales analysis, the appellant's appraiser considered its resultant indicated values of no use because the sale prices of the auto dealerships he included in the analysis contained elements of value such as going-concern, and did not reflect the fee-simple value of the real estate.

Ultimately, the appellant's appraiser relied on the income-capitalization approach to value the subject property. Notwithstanding his determination of the subject property's highest and best use as a complete auto dealership, the appellant's appraiser did not submit or even investigate market rents from auto dealerships. In his opinion, auto dealerships were likely either owner-occupied or leased in non-arm's length transactions and, therefore, reliable market lease data were not available.¹

Having concluded that market-lease data for auto dealerships were not available, the appellant's appraiser

¹ The appellant's appraiser offered no authority in support of this opinion but, given that his conclusion is not necessary to the disposition of the present appeals, the Board did not otherwise address the issue in these findings of fact and report.

valued the subject property by breaking it down into two components based on square footage. He treated the property's office and showroom space as "retail" space, and valued the remaining space, which was used for automotive service, as "industrial space," more particularly "twelve-foot ceiling height warehouse space."

To determine the fair market rental rate for the retail space, the appellant's appraiser collected rental data from approximately twenty-five retail leases in Auburn and nearby towns. Of these, the appellant's appraiser confirmed the lease terms of only eleven leases. The appellant's appraiser viewed only some of his chosen comparables, and during his testimony was not able to offer detailed information regarding most of the properties or their tenants. Known tenants included a golf range, a family pharmacy, a restaurant, and a bank. The appellant's appraiser made no adjustments to account for differences between the purportedly comparable properties and the subject property.

The appellant's appraiser employed the same methodology to determine his estimate of fair market rent for the industrial space, gathering rental data from

thirty-five leases, the majority of which were unconfirmed.² As with many of his chosen retail leases, the appellant's appraiser could not provide details regarding the purportedly comparable industrial properties, including the uses to which the spaces were put. Also like his retail-space analysis, the appellant's appraiser made no adjustments to account for differences between the purportedly comparable properties and the subject property.

The appellant's appraiser derived his vacancy rate for the retail space of the subject property from *Keystone Partners* data relating to the area "southwest of Boston," which did not include, and was not adjacent to Auburn. He provided no explanation for the applicability of this data to Auburn or the area surrounding the subject property. Neither did he state whether data more geographically specific to Auburn was available.

For his industrial vacancy rate, the appellant's appraiser relied on a *Cushman and Wakefield* report that applied to all types of industrial properties for "all of the Boston area." Like his retail data, he acknowledged that the *Cushman and Wakefield* report did not include Auburn or its environs, nor did he address the application

²The record reflects that the appellant's appraiser considered data from unconfirmed leases in both his retail and industrial analyses, but the degree to which the data affected his final rental figures was not clear.

of his chosen data to Auburn or the availability of data more geographically specific to Auburn.

The appellant's appraiser arrived at his estimation of expenses assuming that the subject property would be leased on a triple-net basis, with the landlord responsible for that portion of expenses relating to vacancy. He used expense data from several properties, though he provided little information, if any, about the properties' various characteristics and lease terms.³ Ultimately, he testified that he "pulled all th[e] data and looked at it, and you can see it's all over the place, but [I] just picked out 35 percent, a pretty typical number."

The appellant's appraiser arrived at his chosen capitalization rates for the fiscal years at issue by incorporating data from two distinct sources. The first, *Realty Rates*, provided data relating to the entire country. He averaged *Realty Rates'* capitalization rates for both retail and industrial properties.⁴ The resulting *Realty Rates* capitalization rates for the fiscal years at issue were 8.8%, 8.9%, and 8.8%, respectively.

The appellant's appraiser also developed capitalization rates using the band-of-investment

³ The expenses of the properties chosen by the appellant's appraiser, according to the appraisal report, ranged from 11% to 129% of income.

⁴ These included rates from the debt-coverage-ratio and band-of-investment techniques, as well as survey rates.

technique, incorporating data from local sources including bank lending rates and amortization rates. The capitalization rates he derived from this methodology were 7.2%, 7.6%, and 7.6%, respectively, for the fiscal years at issue.

Finally, the appellant's appraiser calculated capitalization rates for the subject property (before adjusting for a vacancy tax factor) by averaging the *Realty Rates* and the locally sourced band-of-investment rates to arrive at blended rates of 8%, 8.3%, and 8.2%, respectively, for the fiscal years at issue. Having incorporated the various elements of his income-capitalization analysis, the appellant's appraiser's indicated values for the fiscal years at issue were \$2,100,000, \$2,200,000, and \$2,400,000, respectively.

For the reasons discussed in the Opinion below, the Board found and ruled that the income-capitalization analysis upon which the appellant's appraiser based his valuation of the subject property was significantly flawed in several respects, rendering the analysis of little probative worth in determining the fair cash value of the subject property on the relevant assessment dates. Thus, the Board found and ruled that the appellant failed to meet its burden of demonstrating that the subject property's

fair cash value was less than its assessed value for the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in these appeals.

OPINION

In accordance with G.L. c. 59, § 38, assessors are required to assess real estate at its fair cash value, which 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).

An appellant 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 [an] 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)). Consistent with these principles, "the board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General***

Electric Co. v. Assessors of Lynn, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245).

In appeals before the Board, an appellant "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 present appeals, the appellant did not address flaws or errors in the assessors' valuation methodology. Instead, the appellant sought to introduce persuasive evidence of overvaluation through the testimony and appraisal report of its appraiser. However, the evidence presented was wanting in several crucial respects, and the flaws in the appraiser's presentation ultimately compelled the Board to conclude that the appellant failed to sustain its burden of proof.

Generally, real estate valuation experts, Massachusetts courts, and the Board rely on three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. **Correia v. New Bedford Redev. Auth.**, 375 Mass. 360, 362 (1978). The income-capitalization method "is

frequently applied with respect to income-producing property." **Taunton Redev. Assocs. v. Assessors of Taunton**, 393 Mass. 293, 295 (1984).

Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). After accounting for vacancy and rent losses, the net operating income is obtained by deducting appropriate expenses. See **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 452-53 (1986).

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 451. Imputing rental income to the subject property based on fair-market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. See **Correia v. New Bedford Redev. Auth.**, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds*, 375 Mass. 360 (1978); **Library Services, Inc. v. Malden Redev. Auth.**, 9 Mass. App. Ct. 877, 878 (1980) (rescript).

Briefly summarized, the task of valuing a property based on the income-capitalization methodology requires that "appraisers analyze competitive facilities and

determine market rents, market vacancy and credit loss rates, market expenses, market capitalization rates, and general market conditions." *Olympia & York State Street Co. v. Assessors of Boston*, 428 Mass. 236, 239 (1998).

As previously noted, having opined that auto dealerships were likely either owner-occupied or leased in non-arm's-length transactions and, therefore, that reliable market lease data were not available, the appellant's appraiser separated the subject property into retail and industrial components based on square footage. He then gathered rental data from numerous leases for each component.

As a threshold matter, this approach is not consistent with the appellant's appraiser's determination that the subject property's highest and best use was its continued use as a complete auto dealership. Further, the appellant's appraiser failed to establish the comparability of his chosen properties with the subject property. Indeed, certain properties he selected as comparable to the subject property, whose tenants included a golf range, a family pharmacy, a restaurant, and a bank, seemed to bear little resemblance to the showroom and office space in an automobile dealership.

Moreover, during his testimony, the appellant's appraiser did not offer detailed information to establish that his chosen properties shared fundamental similarities with the subject property and were therefore comparable properties suitable for inclusion in his analysis. His appraisal report offered no additional information in this regard. At least as important, he made no adjustments whatsoever to account for differences between his purportedly comparable properties and the subject property, ignoring a fundamental prerequisite to completion of the analysis. The Board found and ruled that these flaws rendered his estimate of the subject property's earning capacity of no probative value.

Like other elements of an income-capitalization analysis, expenses should reflect the market. **General Electric Co.**, 393 Mass. at 610; see **Olympia & York State Street Co.**, 428 Mass. at 245. To arrive at his estimation of expenses, the appellant's appraiser used expense data from several properties whose characteristics and lease terms he knew little about, and which reflected dramatic variations in expense rates. From this data, he chose an expense rate of 35%. This estimation lacked supporting market data that might establish similarity with the subject property and enable a meaningful estimation of

expenses. Further, lacking such data, and from expense rates that were "all over the place," he arbitrarily chose an expense rate that "seemed pretty typical."

The appellant's appraiser's vacancy rates were also not appropriately tied to market rates. The sources of his data for determining his retail and industrial vacancy rates were *Keystone Partners* and *Cushman and Wakefield*, respectively. However, neither source contained data relating to Auburn, the location of the subject property. Further, the appellant's appraiser provided no explanation for the applicability of his chosen data to Auburn, and did not state whether more geographically specific data was available.

As noted above, the capitalization rate in an income-capitalization analysis is a market rate, one that should reflect the return on investment necessary to attract investment capital. See ***Taunton Redev. Assocs.***, 393 Mass. at 295. The appellant's appraiser derived his capitalization rates for the subject property by giving equal weight to *Realty Rates* capitalization rates for retail and industrial properties located throughout the country, and his own locally-sourced band-of-investment rates. There were significant differences between these two measures, and if he had used only the locally-sourced lower

capitalization rates in his analysis, the subject property's indicated values would have been significantly higher than those arrived at through application of the blended rate that he endorsed. Perhaps relevant data would have established that blending the two disparate sets of rates was appropriate, or perhaps local markets were stronger than national markets, warranting use of the lower capitalization rates. Ultimately, neither his appraisal report nor his testimony provided such relevant data, and he gave no credible explanation for his approach. Consequently, the Board afforded no weight to his capitalization rates.

In sum, the appellant's appraiser's income-capitalization analysis failed to provide reliable evidence of market rents, market vacancy, market expenses, and market capitalization rates. Though the Board qualified him as an expert in commercial real estate appraisal, mere qualification of a person as an expert does not endow his or her testimony with any determinative weight. ***Boston Gas Co.***, 334 Mass. at 579. The opinion of an expert witness must be credible and based on proper foundation. See ***State Tax Commissioner v. Assessors of Springfield***, 331 Mass. 677, 684 (1954). For the reasons discussed above, the appellant's appraiser's opinion was neither.

Based on the foregoing, the Board found and ruled that the appellant failed to sustain its burden of demonstrating that the subject property's fair cash value was lower than its assessed value for the fiscal years at issue. Accordingly, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

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

A true copy,

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