

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RENOVATORS SUPPLY INC.

**v. BOARD OF ASSESSORS OF THE
TOWN OF ERVING**

Docket Nos.

F332253, F332254, F332255,
F332256, F334733, F334734,
F334735, F334736, F334737,
F337354, F337355, F337356,
F337357, F337358

Promulgated:

May 9, 2022

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 Erving ("assessors" or "appellee") to abate taxes on certain real and personal property located in the Town of Erving owned by and assessed to Renovators Supply Inc. ("appellant") for fiscal years 2017, 2018, and 2019 ("fiscal years at issue").

Commissioner Elliott heard these appeals and was joined by former Chairman Hammond and Commissioners Good, Metzger, and DeFrancisco in the decisions for the appellant in Docket Nos. F332253, F334734, and F337358 and in the decision for the appellee in Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357.

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

David G. Saliba, Esq. for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered 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, 2016, January 1, 2017, and January 1, 2018, the relevant dates of valuation for the fiscal years at issue, the appellant was the assessed owner of real property located at 1 River Street in the Town of Erving ("subject property"), as well as other real property located on River Street and West High Street ("other real property") and personal property located at 1 Strachan Street ("personal property") ("other real property" and "personal property," collectively, "other subject properties").

The subject property consisted of a 25.872-acre parcel of land improved with a 163,701-square-foot, multi-story main mill building built around 1912, along with four accessory buildings - a 1,932-square-foot brick garage; an 18,992-square-foot, two-

story brick storage building; a 1,620-square-foot open pole barn; and a 528-square-foot shop building. The subject property was partially occupied by the owner and partially occupied by tenants during relevant times.

The following chart itemizes the relevant assessment and jurisdictional information for the fiscal years at issue:

1 River Street	Docket No. F332253	Docket No. F334734	Docket No. F337358
Fiscal Year	2017	2018	2019
Assessed Value	\$1,798,000	\$1,798,000	\$2,347,200
Tax Rate	\$11.31	\$11.63	\$11.93
Taxes Assessed	\$20,335.38	\$20,910.74	\$28,002.10
Taxes Paid w/o Interest	Yes	Yes	Yes
Abatement Application Filed	01/03/2017	10/23/2017	11/26/2018
Abatement Application Denied	03/27/2017	01/22/2018	02/25/2019
Petition Filed	04/11/2017	02/08/2018	03/15/2019

16 River Street	Docket No. F332256	Docket No. F334735	Docket No. F337357
Fiscal Year	2017	2018	2019
Assessed Value	\$90,100	\$90,100	\$118,500
Tax Rate	\$11.31	\$11.63	\$11.93
Taxes Assessed	\$1,019.03	\$1,047.86	\$1,413.71
Taxes Paid w/o Interest	Yes	Yes	Yes
Abatement Application Filed	01/03/17	10/23/17	11/26/18
Abatement Application Denied	03/27/17	01/22/18	02/25/19
Petition Filed	04/11/17	02/08/18	03/15/19

River Street	Docket No. F332254	Docket No. F334733	Docket No. F337356
Fiscal Year	2017	2018	2019
Assessed Value	\$12,600	\$12,600	\$20,400
Tax Rate	\$11.31	\$11.63	\$11.93
Taxes Assessed	\$142.51	\$146.54	\$243.37
Taxes Paid w/o Interest	Yes	Yes	Yes
Abatement Application Filed	1/3/17	10/23/17	11/26/18
Abatement Application Denied	2/13/17	1/22/18	2/4/19
Petition Filed	4/11/17	2/8/18	3/15/19

West High Street	Docket No. F332255	Docket No. F334737	Docket No. F337354
Fiscal Year	2017	2018	2019
Assessed Value	\$4,100	\$4,100	\$6,200
Tax Rate	\$6.96	\$7.15	\$7.35
Taxes Assessed	\$28.54	\$29.32	\$45.57
Taxes Paid w/o Interest	Yes	Yes	Yes
Abatement Application Filed	01/03/17	10/23/17	11/26/18
Abatement Application Denied	02/13/17	01/22/18	02/04/19
Petition Filed	04/11/17	02/08/18	03/15/19

1 Strachan Street (personal property)	Docket No. F334736	Docket No. F337355
Fiscal Year	2018	2019
Assessed Value	\$7,500	\$10,000
Tax Rate	\$11.63	\$11.92
Taxes Assessed	\$87.23	\$119.20
Taxes Paid w/o Interest	Yes	Yes
Abatement Application Filed	10/23/17	11/26/18
Abatement Application Denied	12/04/17	02/04/19
Petition Filed	02/08/18	03/15/19

Based upon the above, the Board found and ruled that it had jurisdiction to hear and decide all the appeals. The Board previously heard appeals concerning the subject property for fiscal years 2015 and 2016 and issued decisions for the appellant, finding fair cash values in the amounts of \$1,360,900 and \$1,245,200, for fiscal years 2015 and 2016, respectively, for the subject property. Consequently, pursuant to G.L. c. 58A, § 12A, the burden of proof shifted to the appellee in Docket Nos. F332253 and F334734 to justify the increases in assessed values of the subject property for fiscal years 2017 and 2018. The burden of proof remained with the appellant in Docket No. F337358 for fiscal year 2019 for the subject property, as it did with Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357, concerning the other subject properties.

II. The appellant's case

A. Docket Nos. F332253, F334734, and F337358

The appellant primarily relied upon the testimony and appraisal report of Kim A. Levitch ("appellant's appraiser"), a certified general real estate appraiser whom the Board qualified as an expert witness, to set forth the narrative of the subject property as old, dilapidated property suffering from severe physical, functional, and external obsolescence. The appellant's appraiser considered the highest and best use of the subject

property to be its use during relevant times for mixed industrial purposes. Although he considered the three approaches to value, the appellant's appraiser developed valuation analyses using the comparable-sales and income-capitalization approaches, finding both methods to be appropriate for the subject property. He ultimately relied on the income-capitalization approach to arrive at his final opinions of value for each of the fiscal years at issue.

For his income-capitalization approach, the appellant's appraiser determined a gross potential income of \$320,493, including rent for the four accessory buildings and a vacancy rate of 25 percent, which he forecast based upon a combination of the owner's stated vacancy and consideration of other multi-tenant mill properties. He calculated an expense ratio of 63.6 percent, opining about the elevated costs of operating an older brick building with a high level of deferred maintenance and repair, as well as the lack of insulation and modern HVAC system. His expenses included a reserve for replacement of 5 percent, management of 6 percent, maintenance and repair of 12 percent, and a miscellaneous category of 4 percent for overages or smaller items not covered in the other expense categories. He developed a capitalization rate of 9.862 percent, to which he added a tax factor of 1.131 for fiscal year 2017, 1.163 for fiscal year 2018, and 1.193 for fiscal year 2019. He concluded

final opinions of value for the fiscal years at issue as follows: \$793,000 for fiscal year 2017, \$791,000 for fiscal year 2018, and \$789,000 for fiscal year 2019.

B. Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357

The appellant offered no affirmative case for Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357, concerning the other subject properties.

III. The appellee's case

A. Docket Nos. F332253, F334734, and F337358

The appellee engaged in cross-examination of the appellant's appraiser, placing a heavy emphasis on the Board's findings of fact and report for fiscal years 2015 and 2016 - a copy of which the appellee entered into evidence, along with jurisdictional documents - but otherwise rested on the assessed values for the fiscal years at issue for the subject property.

B. Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357

Apart from entering jurisdictional documents, the appellee otherwise rested on the assessed values for the fiscal years at issue for the other subject properties.

IV. The Board's findings

A. Docket Nos. F332253, F334734, and F337358

Based on all the evidence of record, the Board found that the assessors failed to support the increases in assessed values for fiscal years 2017 and 2018 for the subject property. The assessors largely relied upon the assessed values, in addition to cross-examination of the appellant's appraiser, which the Board found insufficient to overcome their burden of proof for fiscal years 2017 and 2018.

While the Board found the appellant's appraiser to be a credible witness and found his testimony and report generally to be reasonable, the Board was not persuaded by his analysis in the entirety. The Board determined that a rounded gross potential income of \$320,000 was appropriate, with a 20 percent vacancy and expenses of 45 percent plus reserves of 5 percent. For a capitalization rate, the Board adopted 9 percent plus a tax factor of 1.131 percent for fiscal year 2017. With the market continuing to improve, as indicated in the appellant's appraiser's report, the Board adopted his market increases of 6 percent from fiscal year 2017 to 2018, and 3 percent from fiscal year 2018 to 2019. The following is a summary of the Board's calculations:

Gross potential income	\$ 320,000	
Vacancy @ 20 percent	\$ 64,099	
Effective gross income	\$ 256,394	
Expenses @ 45 percent	\$ 115,377	
Reserves @ 5 percent	\$ 12,820	
Net operating income	\$ 128,197	
Cap rate of 9 percent + tax factor of 1.131 percent for fiscal year 2017 = 10.131 percent	\$1,265,393	\$128,197/10.131 percent
Rounded	\$1,270,000	Fiscal year 2017
Market appreciation @ 6 percent	\$1,346,200	
Rounded	\$1,350,000	Fiscal year 2018
Market appreciation @ 3 percent	\$1,390,500	
Rounded	\$1,400,000	Fiscal year 2019

Based upon the above and all the evidence of record, the Board found that the assessors failed to establish that the increases in assessed values for fiscal years 2017 and 2018 for the subject property were warranted. While the Board did not agree with the appellant's appraiser's conclusions of value for the fiscal years at issue, the Board determined that decreases for each of the fiscal years at issue were appropriate for the subject property. Accordingly, the Board issued decisions for the appellant and abatements in the following amounts:

	Docket No. F332253	Docket No. F334734	Docket No. F337358
Fiscal Year	2017	2018	2019
Assessed Value	\$1,798,000	\$1,798,000	\$2,347,200
Fair Cash Value per the Board	\$1,270,000	\$1,350,000	\$1,400,000
Overvaluation	\$528,000	\$448,000	\$947,200
Tax Rate	\$11.31	\$11.63	\$11.93
Abatement	\$5,971.68	\$5,210.24	\$11,300.10

B. Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357

Based upon the lack of any affirmative case offered by the appellant in Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357, the Board found that the appellant failed to meet its burden of proof and the Board accordingly issued a decision for the appellee for the fiscal years at issue for the other subject properties.

OPINION

I. General

The 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 of them are fully informed and under no compulsion. *Boston Gas Co. v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

Generally, a taxpayer has the burden of proving that the property at issue 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 [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)). "[T]he board is entitled to 'presume that

the valuation made by the assessors [is] valid unless that 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).

However, if an assessment exceeds the Board's prior determination of the subject property's fair cash value for either of the two immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A, "the burden shall be upon the [assessors] to prove that the assessed value was warranted."

A. Docket Nos. F332253, F334734, and F337358

Because the Board's determination of the subject property's fair cash values for fiscal years 2015 and 2016 was less than the assessed values of the subject property for fiscal years 2017 and 2018, the burden shifted to the assessors for fiscal years 2017 and 2018 in Docket Nos. *F332253* and *F334734*. G.L. c. 58A, § 12A. The Board found and ruled that the assessors failed to meet their burden of proof for fiscal years 2017 and 2018. They largely relied upon the assessed values and cross-examination of the appellant's appraiser, which the Board found insufficient to support the increases in assessed values for fiscal years 2017 and 2018 for the subject property.

While the Board found the appellant's appraiser to be a credible witness, the Board did not entirely agree with his analysis of the subject property for the fiscal years at issue.

See **Bodwell Extension, LLC v. Assessors of Avon**, Mass. ATB Findings of Fact and Reports 2007-1257, 1267 (“[T]he Board is not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert may suggest, but can accept those portions of the evidence which the Board determines have the more convincing weight.”) (citations omitted). The Board agreed that a reduction in assessed values was warranted for each of the fiscal years at issue and performed its own calculation of fair cash values for each of the fiscal years at issue. See *id.*

B. Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357

The appellant failed to present any affirmative case for the other subject properties, and consequently the Board found that it did not meet its burden of proof in Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357. See **General Electric Co.**, 393 Mass. at 600 (In appeals before the 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.”) (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

II. Conclusion

A. Docket Nos. F332253, F334734, and F337358

Based upon the above and all the evidence of record, the Board found and ruled that the assessors failed to establish that the increases in assessed values for fiscal years 2017 and 2018 for the subject property were warranted. The Board determined that decreases for each of the fiscal years at issue were appropriate for the subject property. Accordingly, the Board issued decisions for the appellant and abatements in the following amounts:

	Docket No. F332253	Docket No. F334734	Docket No. F337358
Fiscal Year	2017	2018	2019
Assessed Value	\$1,798,000	\$1,798,000	\$2,347,200
Fair Cash Value per the Board	\$1,270,000	\$1,350,000	\$1,400,000
Overvaluation	\$528,000	\$448,000	\$947,200
Tax Rate	\$11.31	\$11.63	\$11.93
Abatement	\$5,971.68	\$5,210.24	\$11,300.10

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B. Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357

Based upon the lack of any affirmative case offered by the appellant in Docket Nos. F332254, F332255, F332256, F334733, F334735, F334736, F334737, F337354, F337355, F337356, and F337357, the Board found and ruled for the appellee for the fiscal years at issue for the other subject properties and issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

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