COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RK TAUNTON CROSSING, LLC v. BOARD OF ASSESSORS OF THE CITY OF TAUNTON

Docket Nos. F342351 & F347093

Promulgated: June 30, 2025

These are appeals heard 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 City of Taunton ("appellee" or "assessors") to abate taxes on a certain parcel of real estate located in Taunton, owned by and assessed to RK Taunton Crossing LLC ("RK Taunton" or "appellant") for fiscal years 2021 and 2022 ("fiscal years at issue").

Commissioner Good heard these appeals. Chairman DeFrancisco and Commissioners Elliott, Metzer, and Bernier joined her 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 1.32.

Rachel A. Wulsin, Esq., for the appellant.

Richard Conti, Assessor, 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.

I. Introduction and Relevant Jurisdictional Information

These appeals pertain to an improved 7.5-acre parcel of land with an address of 9 Mozzone Boulevard ("subject property"). Relevant jurisdictional facts are summarized in the following table:

Fiscal Year	Assessed Value	Tax Rate/ Total Tax Amount	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed With Board
2021	$9,929,100	$28.97/1,000 $287,646.03	Y	2/1/2021	2/11/2021	5/11/2021
2022	$9,840,000	$28.87/1,000 $284,080.80	Y	2/1/2022	4/21/2022	7/18/2022

Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The subject property is improved with a multi-tenant retail building, built in 2006, containing 83,878 square feet of gross leasable space. At all times relevant to these appeals, the subject property was fully occupied by five retail tenants. Information regarding each of the subject property's tenants is summarized in the following chart:

Tenant	Leased Square Feet	$/Square Foot[1]	Lease Terms
TJ Maxx	32,300	$9.00	Triple Net
Michael's	21,695	$9.00	Triple Net
Ulta	10,023	$22.00	Triple Net w/concessions
The Paper Store	9,100	$16.48	Gross w/concessions
Skechers	10,760	$16.00	Triple Net w/ concessions

In addition to these tenants, the subject property hosted an automatic teller machine ("ATM") kiosk. During the fiscal years at issue, the subject property's ATM Kiosk generated additional revenue in the amount of $36,019.00 annually.

II. The Appellant's Valuation Evidence

The appellant presented its case through the testimony and appraisal report of Matthew G. Pattison, certified general real estate appraiser, whom the Board qualified as an expert in the area of commercial real estate valuation. Mr. Pattison first determined that the subject property's highest and best use was its continued use as a multi-tenant retail property.

Mr. Pattison next considered the three approaches to value: the cost approach, the sales-comparison approach, and the income-capitalization approach. It was Mr. Pattison's conclusion that neither the cost approach nor the sales-comparison approach was a useful method with which to determine the fee-simple fair cash value of the subject property. Accordingly, he developed only the

[1] Indicates rent as of relevant dates of assessment.

income-capitalization approach, finding that this method is usually given the greatest weight when valuing income-producing properties.

To begin his income-capitalization approach, Mr. Pattison set out to determine appropriate market rents for the subject property. He selected nine purportedly comparable leases through which to determine a fair market rent. Information regarding each of Mr. Pattison's selected leases is contained in the following chart:

Mr. Pattison's Comparable Leases

Tenant	Location	Lease Start Date	Leased Square Feet	$/Square Foot	Lease Terms
Harbor Freight Tools	Plymouth	12/20	16,672	$12.00	Triple Net
Family Dollar	Fairhaven	7/20	9,100	$11.00	Triple Net
Dollar Tree	Wareham	1/20	9,025	$14.00	Triple Net
Barton's Home Outlet	Plymouth	7/19	25,850	$7.00	Modified Gross
Ollie's Bargain Outlet	Plymouth	11/19	35,365	$8.00	Gross
Dollar Tree	Holbrook	5/20	12,114	$7.78	Triple Net
Family Dollar	Holbrook	5/20	10,315	$7.95	Triple Net
Burlington Coat Factory	Seekonk	10/20	37,500	$10.50	Triple Net
Ocean State Job Lot	Seekonk	2/20	24,602	$8.84	Triple Net

Mr. Pattison also placed some reliance on the subject property's actual leases. However, he felt that adjustments were necessary in the case of The Paper Store, Ulta, and Skechers' rents because the landlord had made significant improvement allowances and concessions when negotiating these leases. Accordingly, for purposes of his income-comparison analysis, Mr. Pattison considered effective rents for those three tenants as follows: $17.00 per square foot for Ulta; $7.78 per square foot for The Paper Store, and $11.00 per square foot for Skechers.

After considering his selected comparison leases, as well as the subject property's actual leases, with the aforementioned adjustments, Mr. Pattison ultimately concluded fair market rents on a triple-net basis for the subject property as follows:

Mr. Pattison's Fair Market Rents

Tenant	**Leased Square Feet**	**$/Square Foot**
TJ Maxx	32,300	$8.00
Michael's	21,695	$9.00
Ulta	10,023	$10.00
The Paper Store	9,100	$10.00
Skechers	10,760	$10.00

Applying his selected fair market rents to each area within the subject property totaled $752,485, to which Mr. Pattison added reimbursements for such items as taxes, common area maintenance, and insurance in the amount of $188,726, along with the projected revenue from the ATM kiosk in the amount of $36,019. These three sources combined resulted in a potential gross income of $977,230.

Mr. Pattison selected a 7.5% vacancy and collection loss rate and applying that rate to his potential gross income resulting in an effective gross income of $903,937, which he used for both of the fiscal years at issue.

The next step in Mr. Pattison’s income-capitalization analysis was the determination of operating expenses. To ascertain appropriate expense estimates, Mr. Pattison reviewed historical income and expense information from several of his lease comparison properties as well as three years of the subject property’s income and expense information. The annual operating expenses indicated by these properties ranged from a low of $4.60 per square foot to a high of $10.03 per square foot, with an average of $7.20 per square foot.[2] Mr. Pattison ultimately selected an operating expense of $3.63 per square foot for the subject property. After deducting his selected operating expenses from estimated gross income, Mr. Pattison arrived at a net operating income of $599,557, which he used for both of the fiscal years at issue.

The last step in Mr. Pattison’s income-capitalization approach was the determination of appropriate capitalization rates. He first reviewed the capitalization rates published in industry sources, including the *PWC Investor Survey* and *Real Capital Analytics.* In particular, he focused on data from the first

[2] Expressed on a percentage basis, they ranged from a low of 29.81% of effective gross income to a high of 51.0% of effective gross income.

quarter of 2020 and 2021 relating to the National Retail and Strip Shopping Center asset categories. These sources indicated capitalization rates ranging from a low of 6.81% to a high of 7.35% during those time periods. Mr. Pattison likewise utilized the band-of-investment technique, which resulted in an indicated capitalization rate of 8.5%. After considering all of this information, Mr. Pattison ultimately selected a base capitalization rate of 8.0%, which he used for both of the fiscal years at issue.

Lastly, Mr. Pattison added appropriate tax factors for each fiscal year to his selected base capitalization rate, to reflect the landlord's obligation to pay a portion of the taxes during vacancy, consistent with his assumed vacancy rate of 7.5%. This resulted in a final loaded capitalization rate of 8.2173% for fiscal year 2021 and 8.2165% for fiscal year 2022. Applying these loaded capitalization rates to his net operating income, Mr. Pattison's income-capitalization approach resulted in final, rounded fair cash values for the subject property of $7,296,000 for fiscal year 2021 and $7,297,000 for fiscal year 2022.

III. The Assessors' Evidence

The assessors, for their part, did not offer affirmative valuation evidence such as an appraisal of the subject property. Instead, after a brief-cross examination of the appellant's expert witness, they called as their witness Roger Durkin, Esq., who is both an attorney and a licensed real estate appraiser. The Board qualified Mr. Durkin as an expert in review appraisal, which is a process by which appraisers evaluate and critique the merits of other appraisers' work. Mr. Durkin conducted just such a review of Mr. Pattison's appraisal in the present appeals, and his testimony and review appraisal report were entered into the record.

In both his testimony and in his review appraisal, Mr. Durkin identified a litany of alleged flaws in Mr. Pattison's valuation methodologies and conclusions. Mr. Durkin stated that Mr. Pattison's appraisal ran afoul of several requirements of the Uniform Standards of Professional Appraisal Practice ("USPAP"), including that it misidentified the report's intended user. Additionally, Mr. Durkin opined that Mr. Pattison should have relied more on the subject property's actual rents rather than on comparable market rents. He further opined that Mr. Pattison should have reviewed the appellant's federal income tax returns to determine its operating income and expenses, rather than merely its annual financial statements and those of his comparison properties. In sum, it was Mr. Durkin's conclusion that Mr. Pattison's appraisal contained so many flaws that ultimately it "lacked credibility."

IV. The Assessors' Income Valuation Record Cards

Also entered into the record by the appellant were the income valuation record cards for the subject property for both of the fiscal years at issue. While official property record cards for properties display a variety of information about a property such as its assessed value, its size, ownership, and physical attributes, as well as sales and building permit history, income valuation record cards show the value of a property as determined through the income-capitalization analysis along with figures for each component of that analysis. Income valuation record cards are created by a municipality using data reported by similar types of income-producing properties within that municipality each year.

In this case, the income valuation record cards for both years showed that the assessors used an across-the-board market rent of $13.21 along with a vacancy rate of 8.0% for the subject property's retail space. As for the ATM, the assessors imputed an income of $30,800 to which they applied a vacancy of 5.0%. They selected a 25% expense allowance for the subject property's retail space and an 11% expense allowance for the ATM. Lastly, they used a capitalization rate of 9.04%, which resulted in an indicated value for the subject property of $8,738,800 for both of the fiscal years at issue, which was lower than the assessed values for both fiscal years.

V. The Board's Conclusions

Based on the evidence in its totality, the Board found and ruled that the appellant met its burden of establishing that the subject property's assessed value exceeded its fair cash value for both of the fiscal years at issue.[3] In reaching this conclusion, the Board agreed with Mr. Pattison's conclusion that the subject property's highest and best use was its continued use as a retail shopping center. The Board likewise agreed with Mr. Pattison that the income-capitalization approach was the best methodology to determine the subject property's fair cash value. However, the Board did not adopt all of the components of Mr. Pattison's income-capitalization analysis, as some of his conclusions lacked adequate explanation or support in the record.

In reaching its conclusion as to the subject property's gross income, the Board adopted the reimbursement amounts suggested by Mr. Pattison, but it made adjustments to his concluded fair market rents to account for differences between his lease comparison properties and the subject property. For example, some of the comparable leases he selected were located in rural or suburban communities, unlike Taunton, which is a city. The Board reasoned that adjustments to Mr. Pattison's concluded market rents to account for these locational differences were appropriate.

[3] While the Board found Mr. Durkin to be knowledgeable, it ultimately found that his observations regarding Mr. Pattison's appraisal report did not detract from its probative worth.

Additionally, the Board gave some weight to the subject property's actual rents as well as the market rent reflected on the subject property's income valuation record cards. After giving appropriate weight to all of these sources in the record, the Board concluded fair market rents for each of the subject property's spaces as follows: $9.00 per square foot for TJ Maxx; $10.00 per square foot for Michael's; and $11.000 per square foot for the three remaining spaces. These rents yielded a potential gross income of $826,063, to which the Board added the ATM kiosk revenue of $36,019 and the reimbursement amounts suggested by Mr. Pattison, which totaled $188,726, for a total potential gross income of $1,050,808.

As for a vacancy rate, the Board took into consideration the 7.5% estimate adopted by Mr. Pattison but also considered the subject property's historical vacancy rate, which was zero. Accordingly, the Board adopted a vacancy rate of 5.0%, which resulted in an effective gross income of $988,267.60.

With respect to operating expenses, Mr. Pattison reviewed three years of the subject property's actual operating expenses and the operating expenses of each of his lease comparison properties. These properties collectively had a range of operating expenses spanning from a low of 29.81% of effective gross income to a high of 51.00% of effective gross income. The Board also noted that subject property's income valuation record cards utilized an operating expense allowance of 25%, which the Board considered to be too low and out of line with the general market range suggested in Mr. Pattison's appraisal. Using all of the information in the record, the Board selected a stabilized operating expense of 35% of effective gross income. Subtracting the operating expenses from the potential gross income, the Board arrived at a net operating income for the subject property in the amount of $648,873.94.

The final step in the Board's income-capitalization approach was the selection of an appropriate capitalization rate. The Board declined to adopt the base capitalization rate of 8.0% selected by Mr. Pattison, as it was outside the range of published market rates contained within his appraisal report, which spanned from a low of 6.81% to a high of 7.35%. Using this range of rates, and exercising its own independent judgment, the Board adopted a base capitalization rate of 7.5%, to which it added appropriate, pro-rated tax factors consistent with its conclusion of a 5.0% vacancy rate for both of the fiscal years at issue.

Applying these loaded capitalization rates to its net operating income of $648,873.94 resulted in final, rounded fair cash values for the subject property in the amount of $8,400,000 for both of the fiscal years at issue. Accordingly, the Board issued decisions in favor of the appellant in these appeals, and granted an abatement of $44,298.03 for fiscal year 2021 and $41,572.80 for fiscal year 2022.

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

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). The goal is to ascertain the maximum value of the property for any legitimate and reasonable use. Here, the Board found and ruled that the highest and best use of the subject property for the fiscal years at issue was its existing use as a retail shopping center.

Generally, real estate valuation experts, the Massachusetts courts, and this 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 Authority,*** 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation." ***Pepsi-Cola Bottling Co.,*** 397 Mass. 447, 449 (1986). As the income capitalization method "is frequently applied with respect to income-producing property," ***Taunton Redevelopment Assocs. v. Assessors of Taunton***, 393 Mass. 293, 295 (1984), the Board agreed with the appellant's valuation expert that it was the most reliable method with which to determine the fair cash value of the subject property.

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). 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* ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. at 451. In determining the earning capacity of the subject property, rents may be used only if they reflect fair market rents. ***Alstores Realty Corp. v. Assessors of Peabody***, 391 Mass. 60, 68 (1984); ***Library Services, Inc. v. Malden Redevelopment Authority***, 9 Mass. App. Ct. 877, 878 (1980). In the present appeals, the Board took into consideration the fair market rents concluded by Mr. Pattison, but made adjustments to account for differences from the subject property. The Board additionally afforded some weight to the subject property's actual rents as well as the rent figures contained on the subject property's income valuation card. The Board did, however, fully adopt the reimbursement estimates suggested by Mr. Pattison as they were appropriate and supported by the record. Choosing an appropriate gross income figure for establishing an income stream was within the board's discretion and expertise. ***Fox Ridge Assocs. v. Assessors of Marshfield***, 392 Mass. 652, 654 (1984).

The Board similarly gave weight to the vacancy rate adopted by Mr. Pattison, but considered it too high in light of the subject property's historical vacancy rate of zero.

After accounting for vacancy and rent losses, the 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 Street Co. v. Assessors of Boston***, 428 Mass. 236, 240 (1998). In the present appeals, the Board took into consideration the range of operating expenses presented by Mr. Pattison and concluded that stabilized operating expenses of 35% of estimated gross income were appropriate.

The final step in the income-capitalization approach is the selection of an appropriate capitalization rate. The capitalization rate selected should consider the return necessary to attract investment capital. ***Taunton Redevelopment Assocs.,*** 393 Mass. at 295.

In addition, in an income-capitalization approach based on triple-net leases, an appropriate pro rata portion of the tax factor is used to take into account the landlord's responsibility for paying taxes on the vacant portion of the subject property. *See* ***Market Forge Industries, Inc. v. Assessors of Everett***, Mass. ATB Findings of Fact and Reports 2014-186, 201. Here, the Board considered the range of market capitalization rates presented in Mr. Pattison's appraisal report before determining a base capitalization rate of 7.5%, to which it applied pro-rated tax factors consistent with its concluded vacancy rate of 5.0%.

The Board need not specify the exact manner in which it arrived at its valuation. ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971). "The market value of the property [can] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment . . . . The board [can] select the various elements of value as shown by the record and from them form . . . its own independent judgment." ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 72 (1941). *See also* ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984); ***New Boston Garden Corp.*** v, ***Assessors of Boston***, 383 Mass. 456, 473 (1981); ***Jordan Marsh Co.***, 359 Mass. at 110. "The credibility of witnesses, the weight of evidence, and the inferences to be drawn from the evidence are matters for the Board." ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

The Board's income-capitalization approach ultimately yielded a final, rounded fair cash value for the subject property of $8,400,000 for both of the fiscal years at issue. Accordingly, the Board issued decisions for the appellant and granted abatements of $44,298.03 for fiscal year 2021 and $41,572.80 for fiscal year 2022.

THE APPELLATE TAX BOARD

By:__________________________________
Mark J. DeFrancisco, Chairman

A true copy,

Attest:___________________________
Clerk of the Board