COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SHAW'S SUPERMARKETS	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF BROOKLINE**
Docket Nos. F332832-833 F335656-657		Promulgated: March 31, 2021

These appeals were 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 Town of Brookline ("appellee" or "assessors") to abate taxes on two contiguous parcels of real estate located at the corner of Beacon and Tappan Streets in Brookline owned by and assessed to Beacon Tappan Limited Partnership and leased to Shaw's Supermarkets ("appellant") with an obligation to pay the real estate taxes for fiscal years 2017 and 2018 ("fiscal years at issue").[1]

Commissioner Good heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Elliott joined her in the decision for the appellee in fiscal year 2017 and the decision for the appellant in fiscal year 2018.

[1]Massachusetts General Laws, Chapter 59, Section 59, provides in pertinent part that: "[a] tenant of real estate paying rent therefor and under obligation to pay more than one-half of the taxes thereon may apply for [abatement of such tax]."

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.

Mark F. Murphy, Esq., for the appellant.

Gary J. McCabe, Chief Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

Introduction and Jurisdiction

As of January 1, 2016, and January 1, 2017, the valuation and assessment dates for the fiscal years at issue, the appellant was the lessee of two abutting parcels improved with a Star Market supermarket and parking for 72 vehicles ("subject property").[2]Relevant jurisdictional facts are summarized in the following table:

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[2] Parcel number 225-26-00, with an address of 1717 Beacon Street, contains the supermarket building and some surrounding parking. Parcel number 225-24-25, with an address of 1705 Beacon Street, identified in the Decision as 0 Beacon Street, contains an abutting parking area.

Relevant Jurisdictional Information

Fiscal Year	Parcel Numbers	Assessed Values	Tax Amounts Tax Rate	Abatement Applications Filed	Date of Denials	Date Petitions Filed with Board
2017	225-26-00 225-24-25	$ 7,211,800 $ 1,522,900 $ 8,734,700	$116,831.17 $ 24,670.98 $141,502.15 $16.20/$1,000	01/12/2017 01/30/2017	02/21/2017 02/21/2017	05/18/2017 05/18/2017
2018	225-26-00 225-24-25	$ 8,013,100 $ 2,110,100 $10,123,200	$125,965.93 $ 33,170.77 $159,136.70 $15.72/$1,000	01/16/2018 01/16/2018	03/27/2018 03/27/2018	06/11/2018 06/11/2018

In accordance with G.L. c. 59, § 57A and its obligation under the lease, the appellant timely paid the taxes due without incurring interest. Based on these facts and in accordance with G.L. c. 59, §§ 59, 64, and 65, the Board found and ruled that it had jurisdiction over the instant appeals.

The appellant presented its case primarily through the testimony and appraisal report of Kenneth J. DeCosta, whom the Board qualified, without objection, as an expert in commercial real estate valuation. Mr. DeCosta prepared income-capitalization and sales-comparison analyses for valuing the subject property. The assessors presented their case principally through the testimony and Assessment Report of their Chairman and Chief Assessor, Gary J. McCabe. Mr. McCabe valued the subject property using discounted-cash-flow and comparable-land-sales analyses. He also explained the assessors' cost and income approaches depicted on their "Property Assessment Reports" and why the higher value achieved through the cost approach indicated that the subject property's highest and best use was for redevelopment.

There is no dispute that the existing supermarket use of the subject two parcels forms a single economic unit. The L-shaped site, with frontage on Beacon and Tappan Streets and a private way known as Regent Avenue, contains a total of 57,719 square feet. There is an MBTA Green Line stop in front of the supermarket along Beacon Street and a right-of-way affecting the rear portion of the site. The site is improved with 72 parking spaces and a single-story commercial retail building with an unfinished basement. The basement is used primarily for storage. Each level of the building contains 15,416 square feet of space. The building was constructed in 1955 and has historically operated as a grocery store. It is of masonry construction and is dated but in serviceable condition, with evidence of deferred maintenance and functional obsolescence, including awkward delivery access. The subject property has been leased to the appellant or an affiliate since 1994 and, during the fiscal years at issue, was operating under the first of four five-year extensions. The annual rent as of January 1, 2016 was $464,097, or $30.10 per square foot, under a triple-net leasing scenario which was consistent with the market for a single-tenanted building like the subject property.

Most of the subject site is located within Brookline's G-1.75 or "General Business" zoning district. Property uses permitted by right in the General Business district include: single and multi-family residences; apartments; medical offices; professional or government offices; parking garages or lots; retail stores or restaurants; and various accessory uses. An approximately 11,000-square-foot portion of the site at 1717 Beacon Street is in Brookline's M-1.5 or Apartment House zoning district. The 98,258-square-foot maximum building area allowed by right on the subject site is calculated as a function of each zoning district's maximum floor area ratio (the "FAR"):

11,000 square feet x 1.50 FAR = 16,500 square feet
46,719 square feet x 1.75 FAR = 81,758 square feet
Total Allowed Building Area = 98,258 square feet

Brookline recognizes the supermarket use on the subject property as a legal use.

The most prominent local retail districts along Beacon, Harvard, and Boylston Streets affecting Brookline are Coolidge Corner, Brookline Village, Cleveland Circle, Chestnut Hill, and Washington Square. The subject property is located on the westerly fringe of the Washington Square commercial district. Washington Square is centered at the intersection of Beacon and Washington Streets and, historically, has been a strong local retail and business service area with office and residential uses. The presence of Boston College, Boston University, the Longwood Medical Area, and other smaller colleges and private schools are significant employers and contributors to the local economy that positively influence the value of residential and commercial properties in Brookline.

The main disagreement between the parties that lead to the appellant's over-valuation claims in these appeals is the subject property's highest and best use for the fiscal years at issue. The appellant claimed that its existing use as a supermarket is its highest and best use, while the assessors contended that some form of mixed-use redevelopment is its highest and best use.

The Appellant's Case

To determine the subject property's highest and best use, Mr. DeCosta relied on a sales-comparison analysis to value the subject property as vacant and income-capitalization and sales-comparison approaches to value it as currently improved. His application of these methodologies resulted in a rounded value for the subject property as vacant of $7,370,000 for the fiscal years at issue, and rounded values as currently improved of $7,650,000 for fiscal year 2017 and $7,880,000 for fiscal year 2018.

Mr. DeCosta posited that the strength of the area's residential market and local development trends indicated that the highest and best use of the subject property as if vacant would likely be for a multi-family residential development with street-level retail. To value the subject property for this potential alternative use, Mr. DeCosta analyzed what he considered to be the most relevant land development sales in Brookline from July 2010 to February 2016. After eliminating the highest and lowest sales prices per square foot of what was constructed, proposed, or approved, he found a range of approximately $60 to $90 per square foot of building area and concluded that the most likely sale price for the subject property as vacant was the median price of $75.00 per square foot, which he multiplied by the subject property's FAR of 98,258 square feet to achieve a rounded value of $7,370,000.

In his highest-and-best-use analysis, Mr. DeCosta also considered the January 2017 sale of the Stop and Shop property on Harvard Street in Brookline for $18 million, apparently for its continued use as a supermarket as opposed to redevelopment. Stop and Shop, which had been leasing the property for years, purchased the 93,964-square-foot site improved with a 31,922-square-foot building with an unfinished basement and parking for approximately 100 vehicles from its owner/lessor. Mr. DeCosta testified to and introduced a newspaper report, without objection, evidencing considerable community opposition to converting and closing that Stop and Shop, indicating to him that owners of the subject property would be subject to similar opposition to any change in use particularly considering that Brookline is underserved by supermarkets. Mr. DeCosta further observed that permitting processes for redevelopments are often protracted and the Metro Area Planning Council's 2018 draft report entitled "A Vision for Brookline's Commercial Areas" did not identify the subject property as one needing to be redeveloped even though several other properties in the immediate area were so identified. Mr. DeCosta argued that the failure to identify the subject property for potential redevelopment indicated that the subject property's use as a supermarket was recognized as integral to the fabric of the community.

To value the subject property as a supermarket for the fiscal years at issue, Mr. DeCosta first applied a direct-capitalization analysis. In that analysis, he considered the subject property's relevant lease and income and expense statements, as well as lease terms and adjusted rents from what he considered to be reasonably comparable properties from the Washington Square business area, other Brookline commercial areas, as well as Newton and Dedham. Based on these properties, he projected a market rent of $35.00 per square foot for fiscal year 2017 with a three-percent increase for the following fiscal year, rounded to $36.00 per square foot.

Mr. DeCosta estimated his market vacancy and collection loss percentage of four percent on those reported in CoStar for the local market for the fourth quarter of 2015. Because of the triple-net leasing scenario, he projected market expenses for only non-reimbursable management and professional fees, plus reserves for replacement and structural repairs. His non-reimbursable management fees of two percent of effective gross income for the fiscal years at issue, and his non-reimbursable professional fees of $3,854 for fiscal year 2017 and $3,970 for fiscal year 2018 closely tracked those reported for the subject property which he believed corresponded to the market. Based on a review of relevant Marshall and Swift Valuation Service reports and market norms, Mr. DeCosta projected market reserves for replacement and structural repairs at $0.50 per square foot for fiscal year 2017, increased to $0.52 for fiscal year 2018. He checked these estimates with projected costs for roof replacement over 25 years and the cost of new HVAC components spread over 15 years.

Mr. DeCosta derived his capitalization rates for the fiscal years at issue by employing market extraction and band-of-investment methodologies and examining an industry survey, "pwc Real Estate Investor Survey Third Quarter 2015," for the national strip shopping center market which Mr. DeCosta reported is for leased and stabilized, institutional-grade assets. The three sales upon which he relied for his market extraction technique suggested rates of 5.6%, 6.5%, and 6.5%. The industry survey, which he did not provide in his appraisal report or introduce into evidence, reportedly showed a market average rate of 6.85%. Based on his purported discussions with local lenders and investors for properties similar to the subject property, Mr. DeCosta assumed for his band-of-investment method an amortization period of 25 years, a mortgage interest rate of 4.5%. a loan-to-value ratio 70%, an equity dividend rate of 6.0% and a mortgage term of 10 years. These assumptions resulted in a rounded capitalization rate of 6.5%.

Based on the capitalization-rate indications from these three techniques, Mr. DeCosta concluded that an overall capitalization rate of 6.5% was reasonable and appropriate for the fiscal years at issue. His income-capitalization approach for the fiscal years at issue is summarized in the following table.

Mr. DeCosta's Income-Capitalization Approach
For Fiscal Years 2017 and 2018

	Fiscal Year 2017	**Fiscal Year 2018**
Tenant Income		
Single Tenant Retail (15,416 SF)	@$35/SF $ 539,560	@$36/SF $ 554,976
Potential Gross Income	**$ 539,560**	**$ 554,976**
Less: Credit Loss & General Vacancy (4.0%)	$ 21,582	$ 22,199
Effective Gross Income ("EGI")	**$ 517,978**	**$ 532,777**
Less: Expenses		
Management Fee/Admin @ 2.0% of EGI	@$0.67/SF $ 10,360	@$0.69/SF $ 10,656
Professional Fees	@$0.25/SF $ 3,854	@$0.26/SF $ 3,970
Reserves for Replace. & Structural Repairs	@$0.50/SF $ 7,708	@$0.52/SF $ 7,939
Total Expenses	@$1.42/SF **$ 21,922**	@$1.46/SF **$ 22,564**
Net Operating Income	@$32.18/SF **$ 496,056**	@33.10/SF **$ 510,213**
Capitalized @ 6.5%	**$ 7,631,632**	**$ 7,849,424**
Rounded To	**$ 7,630,000**	**$ 7,850,000**

In his sales-comparison approach, Mr. DeCosta analyzed six sales of properties occurring from May 2013 to January 2017 in Brookline and Newton that he deemed reasonably comparable to the subject property. These properties had sales prices ranging from $297.14 to $651.92 per square foot of gross building area. After adjustments, this range contracted to $446 to $507 per square foot of gross building area. Mr. DeCosta considered the January 2017 sale of the Stop and Shop property on Harvard Street in Brookline to be the best indicator of value for the subject property. His adjusted value for this property was $507 per square foot of gross building value. Based on this analysis and placing most emphasis on the Stop and Shop property January 2017 sale, Mr. DeCosta concluded that a value of $500 per square foot of gross building was the most appropriate value to apply to the subject property for fiscal year 2017. After applying an appreciation rate of three percent, his value for fiscal year 2018 increased to $515 per square foot of gross building area. These rates resulted in estimates of value for the subject property of $7,710,000 for fiscal year 2017 and $7,940,000 for fiscal year 2018.

In reconciling the estimates of value derived from his income-capitalization and sales-comparison approaches at $7,650,000 for fiscal year 2017 and $7,880,000 for fiscal year 2018, Mr. DeCosta placed more weight on the values that he developed from his income-capitalization method.

His value conclusions are summarized in the following table.

Mr. DeCosta’s Value Conclusions for Fiscal Years 2017 and 2018

Approaches	Fiscal Year 2017	Fiscal Year 2018
Cost	N/A	N/A
Income Capitalization	$7,630,000	$7,850,000
Sales Comparison	$7,710,000	$7,940,000
Reconciliation	**$7,650,000**	**$7,880,000**

Based on: (1) the purchase of the Stop and Shop on Harvard Street for its likely continued use as a supermarket; (2) the probable opposition from the community for a change in the subject property’s use; (3) a likely extensive permitting process to redevelop the subject property; (4) the right-of-way on the 1717 Beacon Street parcel; (5) the town’s report that did not identify the subject property as a property that should be redeveloped; and (6) the values that he estimated for the subject property for the fiscal years at issue as vacant and as improved, Mr. DeCosta concluded that the subject property’s highest and best use was its continued use as a supermarket with values of $7,650,000 and $7,880,000 for fiscal years 2017 and 2018, respectively.

The Assessors’ Case

The assessor’s primary witness, Mr. McCabe, explained the assessors’ and his approaches for valuing the subject property for the fiscal years at issue. Based on these approaches, he opined that the subject property's highest and best use was for redevelopment. The following table summarizes the values resulting from the assessors' mass appraisal, cost approach as explained by Mr. McCabe and depicted on the assessors' "Property Assessment Report."

Assessors' Cost Approach

	Fiscal Year 2017		Fiscal Year 2018	
1705 Beacon St.	Improve	$ 19,800	Improve	$ 18,000
	Land	$1,503,100	Land	$2,092,100
	Total	$1,522,900	Total	$2,110,100
1717 Beacon St.	Improve	$1,012,614	Improve	$1,394,339
	Land	$7,211,600	Land	$8,012,900
	Total	$8,224,214	Total	$9,407,239
Subject Property	**Total**	**$9,747,114**	**Total**	**$11,517,339**
	Land Tot	**$8,714,700**	**Land Tot**	**$10,105,000**

The following tables summarize the assessors' income approach as explained by Mr. McCabe and depicted on the assessors' "Property Assessment Cost Report." The data used to populate this methodology was purportedly gleaned from income and expense reports provided to the town by owners of local commercial properties and some industry reports. There was essentially no discussion about the comparability of the properties from which this data was obtained or any adjustments that may have been applied to account for differences between these properties and the subject property.

Assessors' Income Approach for 1705 Beacon Street

	Fiscal Year 2017		Fiscal Year 2018	
Gross Income	$ 51,480		$ 46,800	
Vacancy & Credit Loss	$ (2,574)	5%	$ (2,340)	5%
Adjusted Gross Income	$ 48,906		$ 44,460	
Operating Expense	$ (4,891)	10%	$ (4,446)	10%
Reserves	$ (2,445)	5%	$ (2,223)	5%
Total Expenses	$ (7,336)		$ (6,669)	
Net Income	$ 41,570		$ 37,791	
Overall Cap Rate	7.04 (incl tax fac)		6.99 (incl tax fac)	
Indicated Value	**$ 590,500**		**$ 540,600**	

Assessors' Income Approach for 1717 Beacon Street

	Fiscal Year 2017		Fiscal Year 2018	
Gross Income	$ 577,771		$ 577,771	
Vacancy & Credit Loss	$ (28,889)	5%	$ (28,889)	5%
Adjusted Gross Income	$ 548,882		$ 548,882	
Operating Expense	$ (74,660)	14%	$ (74,660)	14%
Reserves	$ (27,444)	5%	$ (27,444)	5%
Total Expenses	$ (102,104)		$ (102,104)	
Net Income	$ 446,778		$ 446,778	
Overall Cap Rate	7.63 (incl tax fac)		6.56 (incl tax fac)	
Indicated Value	**$5,852,000**		**$5,911,500**	

Assessors' Income Approach Values for the Subject Property

	Fiscal Year 2017	Fiscal Year 2018
1705 Beacon Street	$ 590,500	$ 540,600
1717 Beacon Street	$ 5,852,000	$ 5,911,500
Total	**$ 6,442,500**	**$ 6,452,100**

Because the subject property's values derived from the assessors' income approach were significantly lower, by $2 million to $3.5 million, than the values of the land and the relatively inconsequential value of the improvements derived from the assessors' cost approach, Mr. McCabe testified that the assessors and he concluded that the subject property's highest and best use was for redevelopment.

As a "check" on the values obtained from the assessors' mass appraisal, cost approach, Mr. McCabe included in his Assessment Report, but did little to explain, a discounted-cash-flow analysis which was also apparently developed through the town's Mass Appraisal Service System. This analysis resulted in values of $9,375,673 and $9,465,639 for the subject property for fiscal years 2017 and 2018, respectively. The starting point for these analyses appeared to be the revenue lines, prior to any expenses, from the subject property owner's income statements ending December 31, 2016, and December 31, 2017. Consequently, this methodology, at best, resulted in lease-fee as opposed to fee-simple values.

Lastly, Mr. McCabe discussed his comparable-land-sales analysis that included six improved properties which he believed sold for redevelopment between August 2014 and January 2017. The average adjusted sale price of these properties per square foot of land was $284.63. The subject property was assessed at $151.33 per square foot of land for fiscal year 2017 and at $175.39 per square foot of land for fiscal year 2018. Mr. McCabe did not provide the Board with underlying detail for any adjustments relating to time, location, size, or any other differences between his comparable-sale properties and the subject property that he and the assessors may have applied.

The Board's Ultimate Findings

Based on the foregoing, the Board found that the subject property's highest and best use for the fiscal years at issue was its existing use as a supermarket. The Board found Mr. DeCosta's highest-and-best-use analysis to be credible and persuasive. The Board agreed with his conclusion, and the factors which led to it, that a change in use for redevelopment, as the assessors urged, was too remote, speculative, and unlikely. These factors include: (1) the purchase of the Stop and Shop on Harvard Street for its expected continued use as a supermarket; (2) the probable opposition from the community for a change in the subject property's use; (3) a likely extensive permitting process to redevelop the subject property; (4) the right-of-way on the 1717 Beacon Street parcel; (5) the town's report that did not identify the subject property as a property that should be redeveloped; and, most importantly, (6) the values that Mr. DeCosta estimated for the subject property for the fiscal years at issue as vacant and the ones the Board found below as improved. In sum, the Board found here that the subject property's existing use represented "[t]he reasonably probable use of property that results in the highest use." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 322 (14th ed., 2013).

The Board further found that the valuation methodologies offered by the assessors and Mr. McCabe were lacking in numerous respects.

With respect to the assessors' mass appraisal, cost approach, Mr. McCabe was not qualified as an engineer, contractor, or architect and was therefore unqualified to render a conclusion of value based on it. Cost approaches are best utilized when the property at issue is a special purpose property or when other traditional valuation methods are unavailing. In addition, the age and accompanying physical and functional obsolescence of the subject property's building did not make it a prime candidate for valuation by a cost approach. The assessors' mass appraisal, cost approach developed per-square-foot values for the subject property's parking and main parcels, without improvements, of $178.75 and $146.25, respectively, for fiscal year 2017, and $248.79 and $162.50, respectively, for fiscal year 2018. The almost 40% single-year increase in value for the parking parcel and the over

11% single-year increase in value for the main parcel were never justified, explained, or even addressed. Based on other information, including the Board’s valuation findings, which concluded that the subject property appreciated approximately three percent during the relevant time-period, the Board found that these increases were excessive and, coupled with its other reservations and concerns regarding the assessors’ mass appraisal, cost approach, further found that the values suggested by this method were suspect.

With respect to the assessors’ income approach, the Board found that the values developed from it are again a function of Brookline’s mass appraisal methodology. As such, it incorporates data collected from a variety of commercial properties in Brookline that are subject to triple-net leases. These properties admittedly include many different types of retail, office, or other commercial uses leased under a triple-net leasing scenario. The Board, therefore, found that many of the amounts and percentages incorporated into the assessors’ mass appraisal, income approach categories were not specific to and were possibly only tangentially related to supermarket or grocery store use. The Board found that this data was obtained from properties that their owners leased on a triple-net basis and not necessarily from properties comparable to the subject property. As a result, the Board found that the values developed for the subject property from the assessors' mass appraisal, income approach were suspect.

With respect to the mass appraisal, discounted-cash-flow approach, the Board found that it, at best, valued the subject property from a leased-fee as opposed to fee-simple perspective and it contained too many unsupported projections and suppositions. Moreover, the Board has never before adopted this method for valuing properties for *ad-valorem* real estate tax purposes because of its hypothetical and futuristic nature. Consequently, the Board found that the values derived from this method were unreliable.

With respect to Mr. McCabe's comparable-land-sale analysis, the Board found that Mr. McCabe did not offer a table, narrative, testimony, or demonstrative evidence revealing the application of adjustments for time, location, size, or any other differences between the comparable-sale properties and the subject property. This lack of transparency and clarity rendered the values derived from this approach suspect.

The Board additionally found that Mr. DeCosta's income-capitalization technique, with several adjustments, was the most appropriate methodology to use to value the stabilized, income-producing subject property. In his methodology, Mr. DeCosta increased the subject property's actual rent from $30.00 per square foot to $35.00 per square foot based primarily on comparable grocery store rents from outside communities and inferior retail areas ranging from $28 per square foot to $37.50 per square foot, as well as rents for two similarly sized stores in inferior retail locations in Newton with rents of $29.00 per square foot and $32.00 per square foot. He reviewed but apparently gave little, if any, weight to the $40.00-per-square-foot to $50.00-per-square-foot range of rents in the Washington Square business district for smaller spaces. The Board found that Mr. DeCosta erred in not considering more strongly the higher rents in the Washington Square area while still accounting for any size discrepancies. Accordingly, the Board adopted a rent of $38.00 per square foot for fiscal year 2017 increased by three percent, as suggested by Mr. DeCosta, to $39.00 per square foot for fiscal year 2018.

The Board also adopted a 6.0% capitalization rate (which accounts for its vacancy rate, discussed below) as opposed to the 6.5% recommended by Mr. DeCosta. The Board found that his market extracted rates averaged closer to

6.0% than 6.5%, and a band-of-investment calculation using assumptions reflecting a slightly lower risk for this stabilized property in a superior location resulted in a capitalization rate closer to 6.0%, as well. In addition, the assessors used various techniques to synthesize a capitalization rate approximating 6.0% or even lower once the tax factor was removed.

The Board found that Mr. DeCosta's recommendations for a four-percent vacancy rate, for modest management and professional fees, and reserves for replacement and structural repairs were reasonable, appropriate, and market driven, given his supporting data, as well as the subject property's existing use and triple-net leasing scenario.

The table below summarizes the Board's income-capitalization methodology for the fiscal years at issue.

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The Board's Income-Capitalization Methodology

	FY 2017		FY 2018	
Potential Gross Income	15,416 sf x $38.00	**$ 585,808**	15,416 sf x $39.00	**$ 601,224**
Vacancy	**@ 4.0%**	**($ 23,432)**	**@ 4.0%**	**($ 24,049)**
Effective Gross Income		**$ 562,376**		**$ 577,175**
Expenses				
Management Fees	2% of EGI	($ 11,248)	2% of EGI	($ 11,544)
Professional Fees	$0.25/sf	($ 3,854)	$0.26/sf	($ 4,008)
Reserves for Replacement	$0.50/sf	($ 7,708)	$0.52/sf	($ 8,016)
Total Expenses		**($ 22,810)**		**($ 23,568)**
Net Operating Income		**$ 539,666**		**$ 553,607**
Capitalized	**@ 6.0%**	**$8,994,433**	**@ 6.0%**	**$9,226,783**
Rounded Fair Cash Value		**$9,000,000**		**$9,225,000**

Lastly, the Board checked the values that it derived for the subject property from its income-capitalization methodology primarily with the January 2017 sale of the Stop and Shop property on Harvard Street in Brookline. This property which is approximately twice the size of the subject property brought a sale price of $564 per square foot of gross building area. Mr. DeCosta adjusted that value downward to $507 per square foot because of the perceived superiority of this comparable property to the subject property, as well as the adjusted per-square-foot values of other sales upon which he relied that ranged from $446 to $499 per square foot of gross building.

While Mr. DeCosta considered most differences between the Stop and Shop property and the subject property to be an overall wash, he did rate this comparable property's functional utility superior to that of the subject property, warranting a 10% downward adjustment. The Board disagreed with an overall downward adjustment. The Board found that Mr. DeCosta did not adequately consider or account for the subject property's superior location and proximity to a T-stop compared to the Stop and Shop property's less desirable location which is only on a bus line. In addition, the Board found that the other comparable properties upon which Mr. DeCosta relied to reduce the $507-per-square-foot value even lower, lacked comparability to the subject property and necessitated large adjustments. For these reasons, as well as the subject property's smaller size, the Board found that the value of the subject property for fiscal year 2017 using this approach should be evaluated on a $575 per-square-foot of gross building area basis, rising by the three percent recommended by Mr. DeCosta for fiscal year 2018, to a $592 per-square-foot of gross building area basis. The adoption of these rates produced values for the subject property of $8,864,200 for the fiscal year 2017 and $9,126,272 for fiscal year 2018, which the Board used only as a check on the values derived from its income-capitalization methodology.

On this basis, the Board found that the appellant carried its burden in proving that the subject property was overvalued for fiscal year 2018, but not for fiscal year 2017. The Board, therefore, issued a decision for the appellee for fiscal year 2017 and for the appellant in fiscal year 2018. Based on the assessment percentages of the parcels that comprise the subject property, the Board allocated its finding of the subject property's fair cash value for fiscal year 2018 to the two parcels, as summarized in the following table:

The Board's Allocation of the Subject Property's Fair Cash Value

Docket No.	Address Parcel No.	Assessed Value ("AV")	Percentage of AV	Fair Cash Value	Over-Valuation
F335656	1717 Beacon St. (225/26-00)	$ 8,013,100	79%	$7,287,750	$ 725,350
F335657	1705 Beacon St. (225/24-25)	$ 2,110,100	21%	$1,937,250	$ 172,850
Total:		$10,123,200	100%	$9,225,000	$ 898,200

Accordingly, the Board granted abatements for fiscal year 2018 for 1717 Beacon Street and 1705 Beacon Street in the amounts of $11,02.50 and $2,717.20, respectively.

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 in a free and open market will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

"'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)). 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co.***, 393 Mass. at 598 (quoting ***Schlaiker***, 365 Mass. at 245).

In determining fair cash value, all uses to which the subject 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. ***Id.*** If the property is particularly well-suited for a certain use that is not prohibited, then that use may be reflected in an estimate of its fair market value. ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). "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 (citing APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 315-16 (12th ed., 2001)), *aff'd*, 62 Mass. App. Ct. 428 (2004).

The Board found here that the subject property's existing use represented "[t]he reasonably probable use of property that results in the highest use." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 322 (14th ed., 2013). In making these findings, the Board not only gave credence to Mr. DeCosta's highest-and-best-use analysis and his rationales, but also its own determination of the subject property's higher value under its existing use than as vacant for redevelopment. On this basis, the Board found and ruled that, for the fiscal years at issue, the subject property's highest and best use was its existing one.

Generally, real estate valuation experts, 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 Redev. 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), but 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).

"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 a 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 (2008) (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 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). In his methodology, Mr. DeCosta increased the subject property's actual rent from $30.00 per square foot to $35.00 per square foot based primarily on comparable grocery store rents from outside communities and inferior retail areas, as well as rents for two similarly sized stores in inferior retail locations in Newton. He reviewed but apparently gave little, if any, weight to the significantly higher range of rents in the Washington Square business district for smaller spaces. The Board found that Mr. DeCosta erred in not placing more weight on the higher rents in the Washington Square area while still accounting for any size discrepancies. In these appeals, the Board increased the rents suggested by Mr. DeCosta to better reflect those for the Washington Square business area and adopted a rent of $38.00 per square foot for fiscal year 2017 increased by three percent, as suggested by Mr. DeCosta, to $39.00 per square foot for fiscal year 2018.

After accounting for market vacancy and rent losses, the net-operating income is obtained by deducting appropriate expenses. ***Pepsi-Cola Bottling Co.***, 397 Mass. at 452-53. "The issue of what expenses may be considered in any particular piece of property is for the board." ***Alstores Realty Corp. v. Assessors of Peabody***, 391 Mass. 60, 65 (1984). The Board found and ruled here that Mr. DeCosta's recommendations for a four-percent vacancy rate, for modest management and professional fees, and reserves for replacement and structural repairs were reasonable, appropriate, and market driven, given his supporting data, as well as the subject property's existing use and triple-net leasing scenario.

The Board adopted a 6.0% capitalization rate as opposed to the 6.5% recommended by Mr. DeCosta. The Board found and ruled that this lower rate better reflected market-extracted rates, band-of-investment calculations using assumptions reflecting less risk, and the rates suggested by the assessors' various techniques.

In reaching its opinion of fair cash value in these appeals, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert witness or the assessors suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. ***Foxboro Assocs. v. Assessors of Foxborough,*** 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 473 (1981); ***Assessors of Lynnfield v. New England Oyster House, Inc.,*** 362 Mass. 696, 702 (1972). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." ***Cummington School of the Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. ***General Electric Co.,*** 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn,*** 392 Mass. 296, 300 (1984). 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 Consolidated Gas Co.***, 309 Mass. 60, 72 (1941).

On this basis, the Board found and ruled that the appellant proved that the subject property was overvalued in fiscal year 2018 but not in fiscal year 2017, and thus ordered abatements for fiscal year 2018 only in the amounts of $11,402.50 for 1717 Beacon Street (Docket No. F335656) and $2,717.20 for 1705 Beacon Street (Docket No. F335657).

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