

FIRST HEALTHCARE CORPORATION

v.

BOARD OF ASSESSORS OF THE TOWN OF CONCORD

1984 WL 16069 (Mass.App.Tax.Bd.)

Appellate Tax Board

Commonwealth of Massachusetts

1984-436

Docket No. 129927

December 17, 1984

*1 This appeal is made under the formal procedure pursuant to G. L. c. 59, ss. 64 and 65, as amended, from the refusal of the appellee to abate taxes on the appellant's real estate for fiscal year 1983.

These findings of fact and report are made pursuant to a request by the appellee under the provisions of c. 58A, s. 13, as amended, and Rule 32 of the Rules of Practice and Procedure of the Appellate Tax Board.

Mark Witkin, Esq., for the appellant.

Brian M. Hurley, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

The appellant is a subsidiary of Hillhaven Corporation, which has its headquarters in the State of Washington. On January 1, 1982 it owned and operated a nursing home in the Town of Concord. The appellee assessed the property for fiscal 1983 at a value of \$1,778,800 and assessed a tax of \$42,299.06. The tax bill was sent on December 7, 1982. On December 27 the appellant filed an application for abatement on the ground of overvaluation. The application was deemed denied on March 27, 1983. The notice of disallowance which the appellee sent on May 3, 1983 was not in compliance with c. 59, s. 63 and is a nullity. The appellant appealed to the Appellate Tax Board on May 19, 1983, within three months of the date the application was deemed denied. The appellant paid the first half of the tax on January 5, 1983, and the second half on March 31, 1983, in both cases without incurring interest. The board finds that it has jurisdiction to hear the appeal.

The appellant's nursing home is located on a parcel of 45,214 square feet at 785 Main Street, which is a part of State Route 62. The locus is appropriately zoned for medical professional use. The building is a brick and cement block structure of three stories and a basement. It contained 123 beds in 45 rooms: three singles, eight doubles and 36 triples. Forty-one of the beds, located on the first floor, are for Level I, skilled nursing care; 82 of the beds, located on the first and second floors, are for Level II, skilled nursing care; and 41 beds, located on the third floor, are for Level III, supportive care.

The nursing home was built in 1968 and opened in October of that year. It has a flat tar and gravel roof, with metal gutters and downspouts and a metal coping around the roof. The windows are aluminum and have metal shutters. At the front of the buildings there is a two-story wood frame and concrete veranda. In the rear of the building there is a blacktopped parking lot with space for 39 cars. The present main entrance to the building is at ground level from the parking lot with a ramp entrance.

Each floor has 15 patient rooms, a nurse's station, a small diet kitchen, and its own living room and dining room, which are the only rooms which have air conditioning – supplied by three central York units mounted on the roof.

All the function rooms, chapel, mechanical and laundry rooms, beauty parlor, storage, administrative offices, staff dining room, pantry, kitchen, and dishwasher room are located on ground level below grade. The kitchen has a quarry tile floor, plastic wall and ceiling, ceiling-hung fluorescent lighting, and the usual kitchen floor fixtures and floor drains. The mechanical room contains the main electrical service for the gas heaters.

*2 The first floor is five feet above grade. Besides the patient rooms and living and dining rooms, it has two shower rooms and a tub room, all ceramic tiled. The second floor living/dining room area has vinyl floor covering instead of carpeting.

The typical patient room has a vinyl tile floor, vinyl wall coverings, plaster ceilings, sliding aluminum combination windows, metal closets with folding louvered doors. Lavatories between rooms have vinyl floor and wall coverings and plaster ceilings.

The nursing home employs 122 people, most of whom are involved in providing direct care and other services to patients.

The appellee's witness testified without contradiction, and the board found, that a nursing home was the highest and best use of the property. The property was adapted to this special purpose, although it could be adapted to other purposes.

Expert witnesses for both parties agreed that there were no comparable sales for the application of the market data approach to value, and that the building was not an exclusively special-purpose structure that could only be valued by the depreciated reproduction cost method. The parties and the board agreed that income capitalization was the appropriate method of valuation.

Witnesses for both parties testified that the object of the method as applied to a nursing home was to factor out all expenses and profit attributable to the business of operating a nursing home and thus arrive at the net income attributable to the real estate.

In nursing home cases the board's practice has been to start with gross income and deduct the costs of the many personal services included in the charge to the patient, such as 24-hour nursing care, the provision of food, entertainment, as well as administrative overhead of operating the nursing home. The entrepreneur's return or "business profit" on the nursing home operation, for which the board has usually allowed 7% of gross income, must also be deducted. From the resulting real estate effective gross income are further deducted a 5% reserve for replacement of building components subjected to rapid wear and tear, such as floors, treads, doors, and mechanical and electrical equipment attached to the realty, and an allowance of a specific dollar value per room for the cost of replacing beds, bedding, furniture, equipment and supplies not otherwise deducted from gross income. The resulting figure is the income to be capitalized. The capitalization rate is composed of the owner's rate of return on investment in real estate, plus the tax rate stated as a percentage. The fair cash value of the real estate is the result of dividing the income to be capitalized by the capitalization rate. The computations of the parties are summarized in the attached table, alongside of the board's computation of the fair cash value and the abatement.

Expert witnesses for the two parties were in substantial agreement in their figures for gross income, nursing home expenses, and net income, which were close to the actual figures for the year ending December 31, 1981. Although the appellant contended for an 8% allowance for entrepreneurship return on gross income, the board agreed with the appellee that 7% was more appropriate. The appellant had also transferred part of what he normally considered entrepreneurship return to a "real estate and investment management fee" computed at 6% of real estate effective gross income. The combined total of this, with his figure for entrepreneurship on gross return, amounted to 8.7% of gross income. The board also rejected this additional management charge as inappropriate.

Table

	Appellant	Appellee	Board
Gross income	1,894,876	1,900,000	1,895,000
Nursing home expenses	1,477,504	1,460,000	1,477,500
Net income	417,372	440,000	417,500
Less:			
Entrepreneurship's return on gross	8% 151,590	7% 133,000	7% 132,650
Real estate effective gross income	265,782	307,000	284,850
Less: reserves			
Real estate mgt.	13,334	0	0
Personal property	43,542	5,000	36,039
Real estate	5% 11,112	3,000	5% 14,243
Total reserves	67,988	8,000	50,283
Net real estate income to be capitalized	197,794	299,000	234,568
Capitalization rate	0.14878	0.1488	0.14878
Capitalized income	1,329,439	2,009,409	1,576,609.7
Fair cash value	\$1,330,000	\$2,010,000	\$1,577,000
Overvaluation			\$201,800
Tax Rate			\$23,78
Abatement			\$4,798.80

*3 The appellant's witness based his personal property reserve on 123 rooms at \$354.00 per room. The appellee's witness estimated the total current value of personal property in the rooms at \$50,000 from net book value data filed by the appellant with the Rate Setting Commission and allowed an annual reserve of 10%, or \$5,000. The board found that this figure was inadequate and adopted a figure of \$293.00 per room, based on a 10% increase over the amount allowed by the board in other cases for the previous year.

For a real estate reserve, the appellee's witness estimated that fast-wearing items would amount to about 3.5% of \$1,743,000, which was the depreciated direct replacement cost of the building, rounded the result to \$60,000, and computed a 5% annual deduction of \$3,000. He admitted that he had made such an allowance only because of previous decisions of the board. The board made an allowance of 5% of real estate net operating income for this purpose (see Opinion below).

The parties agreed that 12.5% was an appropriate rate of return on investment, and the board adopted it. With the real estate tax rate of 2.378%, this produced a total capitalization rate of 14.878%. The board computed an overvaluation of \$201,800 and a tax abatement of \$4,788.80. The board did not find disproportionate assessment.

OPINION

The issue presented by this appeal is whether the appellant's property was overvalued for fiscal year 1983.

The assessors are required to assess real estate at its fair cash value (G. L. c. 59, s. 38), 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 (1950). Market value is a matter of judgment; the board must make its decision on evidence presented but need not adopt the valuation of any particular witness. Assessors of Quincy v. Boston Consolidated Gas Co., 309 Mass. 60 (1941). The board need not specify the exact manner in which it arrives at its valuation. Jordan Marsh Co. v. Assessors of Malden, 359 Mass. 106 (1971).

In this case the parties agreed, and the board found, that income capitalization was the most appropriate method for valuing the appellant's real estate. Neither party produced evidence of sales of comparable properties. The appellee's witness presented evidence of value based on a depreciated reproduction cost, but only as a check on the value derived from capitalization of income.

"Profits from a business located on the land are not a fair measure of the value of the land because the financing returns from a commercial undertaking are dependent upon so many material factors having no relation to the land itself that profits cannot be said to be derived from the land." Assessors of Quincy v. Boston Consolidated Gas Co., supra. To estimate the earning capacity of the land and building, therefore, the parties and the board made the deductions from gross income described in the findings above. The board's use of this method in valuing nursing home property was sustained in Northampton Nursing Home, Inc. v. Assessors of Northampton, 383 Mass. 884 (1981). The board has also granted abatements calculated by this method in Collier v. Assessors of Brockton, 2 Mass. App. Tax Bd. Rep. 148 (1983). Using the same method, the board found no overvaluation in Dean Street Realty Trust v. Assessors of Taunton, 2 Mass. App. Tax Bd. Rep. 122 (1981) and in Collier v. Assessors of Brockton, 2 Mass. App. Tax Bd. Rep. 141 (1983).

*4 In its request for rulings of law, the appellee asked the board to disallow deductions of reserves for replacement of short-lived building component items or personal property items and to disallow deduction of a management or operating profit factor. Since these are all items having no relation to the earning capacity of the real estate, they are deductions required to determine fair cash value. The requests are accordingly refused. The appellant's filing entitled "Request for Rulings of Law" is not addressed; the board finds these requests not in conformance with its Rule 29 for the reason that they combine requests for rulings of law and findings of fact.

Our decision for the appellant was promulgated on August 7, 1984.

By John J. Wall
Chairman