

1. Call to Order

Chair Afienko called the meeting to order at 4:00 P.M.

2. Roll Call

Members present: Joe Afienko, Chair; Mary Thron, Member; Alan Rindler; Member; and James Katsiaficas, attorney from Perkins Thompson.

Other people present in roll call, Stephen Langsdorf, attorney from Preti-Flaherty, Edward Tinker, Kittery Contract Assessor; Paul McKenney, Kittery Contract Assessor; and Jon Shafmaster, Appellant.

3. New Business/Public Hearing

a. Appeal 1, 284 US Route 1 (Tax Map 31 Lot 6). Owner/Applicant Jonathan Shafmaster requests consideration of an application of appeal for real commercial property assessment.

Chair Afienko opened the public hearing and requested the property owner to proceed with his presentation.

Stephen Langsdorf presented that the Board keep in mind the assessment date of April 1, 2020 for both hearings regarding the evidence and the argument of the pandemic for both hearings.

Jon Shafmaster presented his case and issues. He does not have an issue with the Assessors' formula of cap rate and fair market value, saying it is standard. His two issues are: the formula does not capture depreciation which is 2.5%, and it assumes that all leases are the same (i.e., triple net leases). Mr. Shafmaster explained to the Board the triple net lease and how this does not apply to his three tenants. He expressed that to determine a value the Assessors would have to take into account the types of leases the three tenants have. Mr. Shafmaster discussed the assessment date of April 1, 2020, and the need for a reassessment to reflect the situation of retail during the pandemic. Mr. Shafmaster also argued that the standard cap rate should not be applied to his mall due to the quality of the tenant and the length of the lease. He explained the terms of the leases of his tenants to support this.

Questions of the Appellant were opened up to the Board and the Attorneys.

Mr. Langsdorf asked the Appellant if he was a certified Maine appraiser or assessor, and what qualifications he has to give opinions regarding appropriate capitalization rates.

Mr. Shafmaster replied that he was a major outlet mall developer, and the first to develop the outlet in Kittery in 1980, and has been in the outlet mall building and developing business.

Mr. Langsdorf summarized Mr. Shafmaster's response that the Assessors should have taken his three individual leases and determined the cap rate for his specific property.

Mr. Langsdorf briefly reviewed the three ways the State of Maine requires the Assessors to value a property, and the evidence offered by Mr. Shafmaster. Discussion continued around the factors and evidence.

Member Thron asked for clarification on the rent calculation and the timeframe of that figure.

Mr. Shafmaster confirmed it was the rent calculation for the year ending March 31, 2020, and that next year that calculation would be less due to COVID. The rest of the numbers in the calculation would not change.

Member Rindler asked Mr. Shafmaster if he had responded to the Town's income and expense requests, stating initially there was no response. It was determined that during the abatement process after revaluation, Mr. Shafmaster provided that information. Mr. Rindler asked if financial information given at the abatement would have been the same information presented now.

Mr. Shafmaster reported that he is unaware since his CFO provided the evidence.

Mr. Rindler continued with the issue of the evidence submitted does not reflect the appropriate timeframe of the year ending April 1, 2020, thus the Board does not have the evidence needed to provide relief. Discussion continued briefly around the evidence and financials submitted to the Town.

Chair Afienko had no questions of Mr. Shafmaster.

Mr. Langsdorf asked the Board to consider issuing a judgment now, since there is no evidence submitted by the Appellant for the correct timeframe. Otherwise, the Assessors will present their case.

The Board agreed to hear the Assessor's presentation before making a ruling.

Mr. Katsiaficas asked for clarification on the three assessment values listed for the property.

Mr. Tinker reviewed the three figures: the preliminary assessment, the assessment after the informal hearing, and the final assessment after the abatement.

Chair Afienko asked the Assessors to proceed with their presentation as there were no more questions of Mr. Shafmaster.

Mr. McKenney proceeded with the Town's presentation. He reviewed the revaluation process of all properties in the town. Mr. McKenney noted that all commercial properties

were requested to submit income and expense questionnaires for the 2019 tax year. Mr. McKenney explained that all three valuation approaches were utilized: the sales comparison approach, the cost approach and the income approach. He noted that commercial properties increased in value 18% since the last revaluation in 2013.

Mr. Tinker continued the presentation discussing the assessment value process in the commercial properties, describing the assessment as a blended value of all three approaches. He described how they used Mr. Shafmaster's evidence at the abatement to reduce the assessment. Mr. Tinker described how the Town determined the 9.4 cap rate, and how the Town determined the lease terms translated to value.

Chair Afienko asked if Mr. Shafmaster disagreed, and he replied that he was under the impression that it was the prior calendar year, not the fiscal year ending April 1, 2020. He also expressed his issue with the lack of weight the lease terms and quality of tenants have in the assessment. Mr. Shafmaster continued to discuss the uncertainty of COVID and the effects on retail. Mr. Shafmaster expressed his opinion that the Assessors should take the future into consideration in the valuation process.

Chair Afienko asked the Assessors if the effects of COVID would be taken into consideration for April 1, 2021. Mr. Tinker replied that the Town would look at the prior year activity. Mr. Langsdorf explained the difference of valuation in terms of selling the property versus the Town's tax assessment.

Mr. Shafmaster disagreed with the Town, and believes his valuation should be specific to his property, not any other commercial property. Mr. Tinker described the different factors that are individually applied, usually condition factors, and in Mr. Shafmaster's case, the income data he provided that was applied to the value.

Ms. Thron asked the Assessors about the cost approach. Mr. Tinker explained that the cost approach was looked at, and all three approaches were blended together for one value. The evidence Mr. Shafmaster provided was a breakdown of the value, and not how the value was determined. Mr. Tinker explained that the appraisal tables were created. Discussion continued on the Assessors' methodology.

Ms. Thron asked about the quality and length of leases and if the Town analyzes this information. Mr. Tinker replied that they rely on the questionnaires to input the data into the market data system. He explained the data that the Appellant presented is the same data they used in the analysis.

Ms. Thron continued and asked about the reason for the adjustments made by the Town already. Mr. Tinker explained that the adjusted value was due to the evidence submitted by Mr. Shafmaster during the informal hearing and the abatement.

Discussion continued around the cap rate by Mr. Shafmaster, the Board and the Assessors.

Chair Afienko reiterated that the Board was not given enough information to determine if the Assessors' value is wrong compared to Mr. Shafmaster's value. He also questioned vacant commercial buildings, rent prices, and COVID in terms of the factors they have in the Assessors' value.

Mr. Langsdorf read the requirements of the taxpayer for the hearing in order for the Board to consider an adjustment. Bringing evidence on a future date is not acceptable for the present hearing. His burden of proof has not been met due to the lack of relevant evidence needed for the Assessors' value to be overturned.

Chair Afienko agreed with Mr. Langsdorf in that there was not enough evidence to review.

Mr. Shafmaster requested the Board table the hearing for 60 days so that he can provide the accurate figures needed.

Brief discussion continued regarding extending the hearing or voting today.

Ms. Thron asked if the Town adjusts the assessment for the Outlets or commercial properties each year. Mr. McKenney replied that legally they could not do that unless there was a substantial change in the commercial market compared to the residential market. He noted that every property has the right to file an abatement each year.

Member Thron moved to deny the appeal. Seconded by Mr. Rindler. The motion passed 3-0.

The Board took a recess at 5:20 PM, and reconvened at 5:28 PM.

Mr. Katsiaficas read the findings of fact and the Board discussed and voted for each one as follows:

1. Appellant represented himself and offered his opinion of value using an income method, but did not present an appraisal of the Property performed by a Maine certified professional real estate appraiser.
2. Appellant argues that based upon actual rental and other income, expenses, taxes and a capitalization rate of 11 percent to reflect the length of leases and quality of tenants, the April 1, 2020 value of the Property was \$2,676,520.
3. The Town undertook a townwide revaluation in 2020, and those values were used for April 1, 2020; the Town used all three approaches to value -- income, sales and reproduction cost -- to determine value through a blended value that takes into account building size, location, age, condition and income.
4. After informal discussion, the Town reduced the initial revaluation value for the Property from \$5,667,800 to the April, 2020 assessed value of \$5,280,200, and the Assessor granted an abatement to further reduce the Property's valuation to \$4,708,700 after reviewing Appellant's specific rental income and expense data.

5. At the hearing, the Appellant presented evidence of actual rental and other income, expenses, and taxes for the entire calendar year 2020, which was beyond the assessment date of April 1, 2020; therefore, the Appellant has failed to present credible evidence of value that would overcome the presumption of validity of the Assessor's April 1, 2020 valuation of the Property, and so has failed to meet its burden on its claim of overvaluation. The Board declined to grant Appellant an extension of time to bring in other data prior to April 1, 2020, since the Appellant had received an abatement for this year already based on actual data, and the Appellant should have understood that actual data for this abatement application was needed here.

On Motion of Member Thron, seconded by Member Rindler, based on the above, the Board voted to deny the abatement appeal by a vote of 3 - 0.

Mr. Afienko moved to approve the findings of fact as written, and deny the appeal. Mr. Rindler seconded. The motion passed 3-0.

Ms. Thron moved to authorize the Chair to sign a written notice of decision and findings. Seconded by Mr. Rindler. The motion passed 3-0.

b. Appeal 2, 375 US Route 1 (Tax Map 47, Lot 4): Owner/Applicant F/C Kittery Development LLC requests consideration of an application of appeal for real commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

c. Appeal 3, 318 US Route 1 (Tax Map 38, Lot 13A): Owner/Applicant F/C Kittery Development LLC requests consideration of an application of appeal for real commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

d. Appeal 4, 294 US Route 1 (Tax Map 38, Lot 14): Owner/Applicant Ripley Road Associates LLC requests consideration of an application of appeal for real commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

e. Appeal 5, 345 US Route 1 (Tax Map 47, Lot 1): Owner/Applicant CPG Kittery Holdings LLC requests consideration of an application of appeal for real commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

f. Appeal 6, 325 US Route 1 (Tax Map 38, Lot 7): Owner/Applicant CPG Finance II LLC requests consideration of an application of appeal for real commercial property assessment. Agent is Jonathan Block, Pierce Atwood LLP.

Jonathon Block presented his case. He noted that it is the tenants of the properties that are also affected, since the tenants pay net rents which includes paying the property taxes. Assessments over the 2019 and 2020 tax year were noted, showing an increase in value despite the decline in brick-and-mortar retail and the COVID pandemic. Mr. Block discussed the April 1 assessment date and State law, emphasizing the importance of the property value on April 1 being a closed outlet mall. Mr. Block discussed the decline of brick-and-mortar sales, cap rates, and asset values. Mr. Block

requested an executive session to discuss proprietary financials, including: tenant sales volumes, income expenses and income approach, rent roll, and income statements.

The Board discussed the option of executive session to review the information.

Mr. Rindler made a motion to go into executive session. Seconded by Ms. Thron. The motion passed 2-1.

The Board went into executive session at 6:05 PM, and reconvened at 6:37 PM.

Chair Afienko made a motion to emerge from executive session. Seconded by Mr. Rindler. The motion passed 3-0.

Chair Afienko requested that the Appellant and the Town summarize the factors of the assessments and values.

Mr. Block stated that in the income approach the major difference is the cap rate. The comparable sales data supports the value presented by the property owner. Data was reviewed regarding national cap rates provided by an international company, Green Street Advisors.

Mr. Langsdorf objected to this data by Green Street Advisors, stating it is an unknown company making determinations for Kittery.

Mr. Tinker could not verify the company.

Mr. Block stated the Simon Properties utilizes Green Street Advisors for their analytical resources. Cap rates were discussed, as well as outlet shopping center sales. Mr. Block utilized sales data to determine the Kittery Outlets would be valued at 20 million dollars instead of the 61 million dollars the Town stated. The sale data was national data, not specifically Maine sales data. Declining sales data was mentioned, in terms of different retail establishments, noting apparel stores declining specifically. Mr. Block referenced several included articles provided to the Board for review. He summarized that the assessed value increasing from 58 million dollars to 61 million dollars in this retail environment is unjust. He asked for the supporting data on cap rates, and comparable sales from the Town.

Chair Afienko asked to hear from the Town.

Mr. Tinker presented for the Town. He made the distinction of the difference between an indoor versus outdoor mall, and that in the local Seacoast area the outdoor mall has regained its value. He clarified the increase in the value from 2019 to 2020, stating the 2019 value was based on the last revaluation of 2013. The Appellant's property increased 4.85%, with the tax burden decreasing 28.35%. The cap rate was discussed, with the property noted as a "B" quality. Mr. Tinker reported that the Town used the net operating income provided by the Appellant.

Mr. Rindler asked for clarification on the derivation of the cap rate and if it was standard within the State of Maine. Mr. Tinker replied that it is, and that the blended cap rate formula was used in other commercial properties in Kittery.

Mr. Rindler also asked for a rebuttal to the Appellant's proposed cap rate, and Mr. Tinker replied that the difference is that the Town does not believe it is a "C" or "C minus" property.

Mr. Rindler asked the Town's opinion on the difference of the mall versus the outlet. Mr. Tinker replied that the malls are the ones having the difficulty of the pandemic's effects and the retail decline in recent years.

Chair Afienko commented on the economic report of national retail and how that translates to the local retail market. Mr. Tinker commented that they try to stay as local as possible for the market.

Mr. Block proceeded to ask the Town questions as there were no further questions from the Board to the Town.

Mr. Block asked if the buyers for strip malls in Kittery are local businesses or national companies, and that the market is more than local. Mr. Tinker replied that multiple people or companies can own the buildings. He also replied that cap rates and income data would be local to the area, not national.

Mr. Block asked for details on how the Town classifies the property as a "B" factor level. Mr. Tinker replied they base the factor on the property, the tenants, the location, and income. Mr. Block asked for more clarification if there were written standards for the classifications. Mr. Tinker replied that they create a set of standards as part of the revaluation by a physical view of each property. Mr. Block asked if there were any sales of strip malls in the year prior to April 1, 2020 in Kittery. Mr. Tinker replied that there were a few sales of commercial properties, including some on Route 1, but he did not have the sales data.

Chair Afienko commented that without comparable sales data it is difficult to use the sales approach for value, and that they rely on the other two approaches.

Mr. Tinker briefly explained the approaches and how the Town utilizes the models to create values. He also noted that the Town did not receive the confidential financial information from the Appellant until the abatement filing, not at the revaluation.

Chair Afienko asked if they had received the confidential information would it have changed the value for April 1, 2020 and Mr. Tinker replied no.

Ms. Thron asked if there was a change at the abatement filing, and the Assessors replied no.

Mr. Block asked for more information regarding the cap rate, however Mr. Tinker could not provide the specific answer regarding the sale data that resulted in the cap rate used for the value.

Mr. Rindler asked if the Appellant was satisfied with the tax assessments in prior years.

Mr. Block replied no, but that the fact that the valuation increased during a time that the mall was shut down, coupled with the long-term trend of declining brick-and-mortar.

Mr. Rindler clarified that the long-term trend of decline was the reason for his question about the value in prior years, since the decline has been happening since 2016 according to the Appellant.

Mr. Block replied that the Appellant may have been dissatisfied with prior year's assessments but they did not file abatements. It was the increase that got their attention.

Discussion continued briefly on the assessed values, the tax rate, and the increases or decreases. Mr. Langsdorf summarized the revaluation and the need to bring the ratio of assessed value in line with the sales and market value.

Mr. Block rebutted and summarized the market value went up, which would cause a potential buyer to look at generated income, risk assessment, asking prices, and cap rates.

Ms. Thron moved to close the public hearing. Seconded by Mr. Afienko. The motion passed 3-0.

Deliberation

Ms. Thron stated that the deciding factors are whether the malls are a "B" versus "C" condition rate, and the corresponding cap rates. She noted that it is not surprising the value went up, and it did not go up as much as most properties in Kittery. She stated she takes the data provided by Green Street Advisors at face value.

Chair Afienko noted the Town's point of view and the Appellant's point of view based on the confidential data. He acknowledged the national retail data is informative, but that the Town took into consideration everything they had to reach their value. The national data does not reflect on the Board's job on granting an abatement.

Mr. Rindler agreed with the Chair. He noted the information presented in the documents described the year 2020, as opposed to the year leading up to April 1, 2020. The national organization's data and opinion should not be the basis for the decision of the Board. The Assessors answers to his questions were appropriate to their job performance, and the Appellant's confidential information was not enough to persuade him that the value was wrong. Mr. Rindler does not feel there is sufficient evidence that the Assessors' valuation was manifestly wrong.

Ms. Thron agreed that the Board has not received enough evidence to show that the Town was manifestly wrong. She noted the cap rate differences and the impact they have on the assessment, but that she did not hear enough to know what the cap rate should be.

Chair Afienko moved to deny the abatement for the properties. Seconded by Mr. Rindler. The motion carried 3-0.

The Board took a recess at 7:26 PM, and reconvened at 7:33 PM.

Mr. Katsiaficas read the findings of fact and the Board discussed and voted for each one as follows:

1. Appellant argues as to all properties that are the subject of these Appeals that: (a) Governor Mills declared a Civil State of Emergency on March 15, 2020 due to the COVID-19 pandemic; (b) Kittery Premium Outlets was closed to the public from March 19, 2020 to April 1, 2020; (c) the Town has increased the assessed values of the Properties for 2020; (d) consumer habits have changed with technology to shift sales from brick and mortar retail outlets to online retail outlets such as Amazon and Wayfair; (e) the Assessor did not use proper valuation techniques to value the Properties; and (f) the Assessor failed to consider all relevant factors in determining just value, particularly the economic obsolescence and loss of value of brick and mortar retail outlets. The Appellant also contested the increase in the overall assessed value from \$58,300,000 to \$61,600,000 at the same time as a long-term decline in sales continued and the beginning effects of the COVID-19 pandemic emerged.
2. Atty. Block presented the Appellant's own opinion of value based upon a capitalization rate of 11.89% and income and expense information that it had provided to the Town Assessor to arrive at an April 1, 2020 value of \$40,000,000, and supported that with sales reports and retail sector reports that the Appellant provided, one of which characterized the Properties as C to C+ in quality. The Appellant did not present real estate appraisals by a certified Maine real estate appraiser for the Properties.
3. The Town Assessor did not agree with the Appellant's capitalization rate; he testified that he calculated all capitalization rates in the same manner and applied the capitalization rate of 10.42% to Appellants' property using Appellants' income and expense information, and characterized all of the Properties as B in quality. The Assessor testified that he arrived at this value by looking at comparable sales and replacement cost less depreciation as well as income, and looked at rental income, vacancy rate and building condition. The Assessor noted that contrary to the Taxpayer's argument that brick-and-mortar retail sales have declined in recent years, the Properties' net operating income has been consistent over the period from 2016 through 2019. He also observed that the April 1, 2020 assessed value of

\$61,600,000 was a blended value from all three approaches; the income method alone would have provided a greater value of \$70,962,985.

4. The Board is not persuaded by Appellant's presentation of national trends and statistics of unknown origin and quality, and finds that the Assessor reviewed the information provided by Appellant fairly according to the Town's standards.

5. Therefore, the Board concludes that Appellant has failed to provide credible evidence of value to support the alleged overvaluation of the Properties, and that Appellant has failed to meet its burden on the issue of overvaluation.

6. The Appellant failed to demonstrate that the Properties were assessed differently than similar properties of the same class, and so Appellant has failed to meet its burden on the issue of unjust discrimination.

On Motion by Chair Afienko, seconded by Member Rindler, based on the above, the Board denied the abatement Appeals and authorized the Chair to sign the findings by a vote of 3 - 0.

4. Other Business

Approval of Minutes- June 23, 2021

Chair Afienko moved to approve the minutes as written. Seconded by Mr. Rindler. Motion passed 2-0-1.

5. Adjournment

Chair Afienko moved to adjourn the meeting at 7:42 PM.

Submitted by Carrie Varao on August 25, 2021.

Disclaimer: The following minutes constitute the author's understanding of the meeting. Whilst every effort has been made to ensure the accuracy of the information, the minutes are not intended as a verbatim transcript of comments at the meeting, but a summary of the discussion and actions that took place. For complete details, please refer to the video of the meeting on the Town of Kittery website.