

MEMORANDUM

SUPREME COURT, SUFFOLK COUNTY

I.A.S. PART 2

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PARK PROPERTY ASSOCIATES LLC.

BY: BIVONA, J.S.C.
DATED: May 12, 2015

Petitioner,

INDEX Nos. 05855/14, 05854/14
02984/10, 30988/09, 27111/09,
21548/07, 19464/06, and
16981/05

- against -

SMITHTOWN TOWN ASSESSORS,

SUBJ

Respondent.

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Decision After Trial

In this consolidated special proceeding, involving real property tax years 2005/2006 to 2012/2013 inclusive, Petitioner grieved its real property assessment as fixed by the assessor of the Town of Smithtown for each tax year¹. Counsel for the parties have stipulated to utilize an income capitalization analysis as reflected in Exhibits "2" and "A" admitted in evidence. As attested by Petitioner's real estate appraisal expert with the agreement of Respondent's appraisal expert, both real estate

¹ Each tax year commences December 1 and runs through November 30. See Suffolk County Tax Act-Chapter 311, Laws 1920 as amended.

appraisal experts had also agreed to average the expenses as reflected in the exhibits.

The parties essentially dispute the vacancy rate and the income stream of the subject real property.

The subject property, located at 270 Oser Avenue, Smithtown, New York, is improved with a 40,000 square foot industrial/warehouse building which was constructed in 1975. It is more than 40 years old and located in a mature, developed, industrial park neighborhood (Respondent's Exhibit "A"). The property has the benefit of being serviced by the industrial park's sewer plant. It is asserted that the industrial park is a major hub and employer within the Township. A portion of the industrial park is also situated in the adjoining Town of Islip. Given the advanced age and dated style of the structure, the subject property allegedly suffers from functional, physical and economic obsolescence. There are numerous vacancies in buildings located throughout the industrial park as a result of the decline in the economy. In the opinion of Petitioner's appraiser, it is unrealistic to consider reproduction of the building because of its antiquated design, particularly since tractor-trailers have great difficulty in maneuvering when servicing the subject property.

The typical building in the industrial park reflects industrial park designs of the 1960-1970 period and is similar to the improved subject property (ie.) 40,000 square

feet of commercial space with a 300 foot front and 325 side yard linear footage.

Recently constructed industrial parks contain improved structures of approximately 100,000 square feet in size, thereby permitting use by multiple tenants.

The newer buildings also contain more office space. In the opinion of Petitioner's appraiser, the subject property does not compete well when compared to newer industrial parks. The subject property has been vacant since June 2012.

Petitioner's appraisal witness chose several rates [year specific] as a vacancy rate.

He selected a variety of properties to demonstrate rentals comparable to the subject property. Notably, all comparable rentals chosen are located in the industrial park with the exception of comparable rental #8. As a result of such analysis he selected \$7 per square foot as an appropriate rental rate in developing his income conclusions for both gross income and net operating income (NOI).

Respondent's real estate appraiser's qualifications were credited and recognized by the Court. He reported twenty-four (24) comparable leaseholders to develop and support his various opinions, including vacancy rate, net operating income and ultimate property value for each of the tax years considered.

However, under incisive cross-examination, it was shown that he had relied

upon computer databases and had not actually inspected several of the sites chosen as comparable leaseholds. He also testified that he did not employ any sales research since he did not rely upon any market data approach. He did prepare for the Court's aid a comparable industrial lease chart which greatly assisted the Court in its determinations as made herein.

Regarding the number of loading bays in analyzing leaseholds comparable to the subject property, Respondent's appraiser surmised that the number of loading bays would reflect the needs of the particular tenant, rather than necessarily the competitive posture of the subject property to the market in general. Of the twenty-four (24) comparable leaseholds chosen, he visited all but three (3) of the properties including #6, #13 and #18. He conducted an interior inspection of nine (9) of the properties including comparable #1, #3, #6, #9, #11, #13, #16, #18 and #19. It is not clear if he focused on the element of ceiling height, a material issue related to the subject property's capacity to compete in the current commercial warehouse market. In his opinion comparable lease #14 did not require an adjustment for location. As to comparable lease #13, (located 14.5 miles away in the New Horizons industrial park development) he did not inspect that site, but nevertheless adjusted its ceiling height. He also made an adjustment for structure size. He also did not inspect the

interior of comparable lease #16. Lastly, comparable lease # 24 is located 19 miles from the subject property and its interior was not inspected.

Based upon his cross examination answers, it appears that Respondent's appraiser employed a "scattergun" approach, by loading up the number of purported comparable leases without inspecting and thoroughly analyzing each comparable lease, when comparing them to the subject property. While the Court does not outright reject the appraisal, it ascribes less evidentiary weight to the appraisal report and the expert opinion of its author.

Notably, Respondent's appraisal expert did include five (5) properties situated in the same industrial park where the subject property is located. However, he chose to muddy the sample by including other alleged comparable properties scattered throughout western Suffolk County. Excluding the properties not located in the hamlet of Hauppauge, there are five (5) properties close in similarity to the subject property. Attached as an addendum hereto, is a modified spreadsheet listing the Hauppauge comparable leases, listing the adjustments made by Respondent's appraiser in adjusting the selected comparable properties to the subject property.

When challenging a real property assessment, the focus of the challenge is the actual use of the real property as of taxable status date for each tax year. See **General**

Motors Corp. Central Foundry Division v. Assessor of Messina, 146 A.D.2d 851;
lv. den. 74 N.Y. 2d 604 (1989).

Respondent's appraiser in his written report admitted in evidence (Respondent Exhibit "A") concluded that Petitioner's assessment should be reduced as follows:

<u>Tax Year</u>	<u>Percentage Reduction Respondent</u>	<u>Percentage Reduction Petitioner</u>
05/06	23	39
06/07	25	37
07/08	26	42
08/09	20	42
09/10	16	42
10/11	19	36
11/12	30	52
12/13	29	48

QUERY: why is there such a marked disparity between two neutral objective evaluators? The answer is the scope of their disagreement on vacancy rates and credit loss, as well as rental value. In considering effective gross rental (EGR) value each expert reports his conclusion as follows:²

	<u>Respondent</u>	<u>Petitioner</u>
05/06	292,950	112,530
06/07	302,400	283,613
07/08	321,300	292,121

² In several instances, the Court has rounded the numbers.

08/09	340,200	301,243
09/10	340,200	309,911
10/11	321,300	275,750
11/12	292,950	160,000
12/13	292,950	240,000

In examining the comparable rentals utilized by respondent's expert, (24 in number) the subject property is reported twice (see Exhibit "A" page 24), representing rental information in years 2005 and 2010. In his analysis of adjustments (page 26) he cites fifteen (15) comparable leases adjusted for inferior ceiling, imposing positive adjustments to reflect the upward adjustment to compensate for the perceived inferiority, when comparing the comparables to the subject property (see *Appraisal of Real Estate, 9th Ed., pgs. 315, 445*).

The Respondent's appraiser also reported six (6) comparable leases located in the Hauppauge area. As noted previously, the subject property is situated in an established industrial park. The Court also notes that the Petitioner reported eight (8) comparable leases located in or nearby the industrial park, where the subject parcel is located.

In reviewing the Respondent's appraisal grid sheet (Exhibit "A" page 24) Respondent reports a size adjustment to each lease where appropriate. He reports a uniform - 5% or +5% adjustment for size for fourteen (14) of his leases. Yet, when

analyzing selected comparables to the subject property adjusted for the size component the Court notes the following:³

Comparable #	Gross Lease able Area	
1	125,000 ft. ²	+5%
2	13,850 ft. ²	+5%
4	17,800 ft. ²	-5%
9	123,212 ft. ²	-5%
11	12,000 ft. ²	+5%
12	15,150 ft. ²	-5%
13	18,750 ft. ²	-5%
15	98,710 ft. ²	-5%
16	10,000 ft. ²	-5%
17	28,000	(7 ½%)
20	12,150 ft. ²	-5%
21	17,800 ft. ²	-5%

Petitioner reports nine (9) comparable rentals (Petitioner Exhibit "2" page 52). All are located in the hamlet of Hauppauge, listing a size adjustment of -5% to 14% of the selected comparable leases, indicating a superiority in size when compared to the subject property. Petitioner's expert reconciles and correlates his final valuation conclusions, indicating significant reductions in the assessed value.

Respondent's appraisal expert observed that (Exhibit "A" page 20): "The lack of available capital created a ripple effect throughout the economy resulting in business and industry wide contractions and the concomitant layoffs that resulted therefrom. While the credit crunch is now easing somewhat, credit is still "tight",

³ See attached spread sheet

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with lending standards much higher than those seen during the 2000-2007 “heyday”. Both the national and regional unemployment rates have jumped substantially since 2008, affecting not only blue-collar workers but also more affluent “Wall Street” types”.

Reviewing the Rental Adjustment Analysis Grid of the Petitioner’s appraisal (Exhibit “2” page 52) and comparing it to Respondent’s Comparable Industrial Leases Considered (Exhibit “A” page 24) the Court observes that neither report has a common leasehold. All of the Petitioner’s comparable leases are single use tenant facilities, whereas Respondent’s comparable leases are a mix of single and multiple use tenants. Petitioner has a range of adjusted lease rentals from a low of \$5.14 to \$7.75/square feet. Respondent reflects an adjusted range of \$6.05 to \$10.24/square feet. Both experts relied on net leases in most instances.

Respondent reports thirteen (13) leases to which no adjustments are made, including two (2) which are leases of the subject property. Petitioner provides three (3) leases without any reported adjustments. Petitioner provides an income capitalization analysis (Exhibit “2” page 67) comparing the comparable leases considered as reported by Respondent (Exhibit “A” page 35) stating an effective gross income per square foot for each year under review:

<u>Tax Year</u>	<u>Petitioner</u>	<u>Respondent</u>
05/06	\$6.18	\$7.32
06/07	\$6.65	\$7.56

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07/08	\$6.89	\$8.03
08/09	\$6.90	\$8.51
09/10	\$6.98	\$8.51
10/11	\$6.98	\$8.03
11/12	\$5.40	\$7.32
12/13	\$5.63	\$7.32

The Court adopts the Petitioner’s effective gross income (EGI) rates for each year because it more closely reflects the true market by its reliance upon comparable leases located in the neighborhood of the subject property.

The parties have by stipulation agreed to average the total expenses for each year and the total capitalization rates.

It is further noted Petitioner’s expert reported EGI at a square foot net rental value, while the Respondent’s expert reported EGI in whole dollar amounts, compelling the Court to “do the math” for analysis purposes.

Finally, each expert reported values at a square foot of GBA (gross building area) in whole dollar amounts as follows:

<u>Tax Year</u>	<u>Petitioner (p.67)</u>	<u>Respondent (p.35)</u>
05/06	\$47	\$57.85
06/07	\$52	\$61.33
07/08	\$52	\$64.15
08/09	\$50	\$65.93
09/10	\$48	\$63.83
10/11	\$48	\$58.48
11/12	\$36	\$52.48
12/13	\$36	\$51.88

Appraising is an art not a science. Although values are expressed numerically, all conclusions only represent opinions of value. The numerical expressions of concepts are reflections of the appraiser's subjective conclusions.

In this litigation, both expert witnesses are recognized as competent experts in the field of real estate valuation. Petitioner's appraiser found sufficient comparable properties within the same mature industrial park or nearby vicinity of the subject property. Not so the Respondent's expert. As reported above, the Court selected an array of Respondent's leases located in the Hauppauge area.

Recognizing that the opinions are learned expressions of accumulated conclusions, the Court is not bound by the specific numerical amounts as concluded by the experts. Based upon the testimony and the documents and evidence adduced during trial the Court makes the following determinations for each year under review for the assessed taxable valuation for the subject property:

<u>Tax Year</u>	<u>Amount</u>
05/06	\$2,094,440
06/07	\$2,345,728
07/08	\$2,329,600
08/09	\$2,248,700
09/10	\$2,158,300
10/11	\$2,101,000
11/12	\$1,576,800
12/13	\$1,732,850

Accordingly, the assessed valuation, reflecting the above market values for each tax year noted shall be adjusted accordingly for the years under review in these

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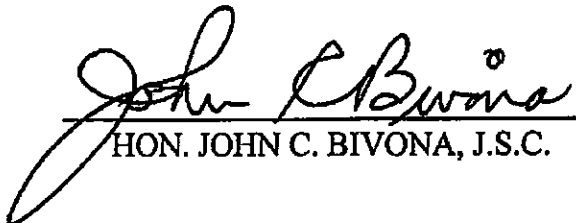
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proceedings.

Submit the Order and Judgment by **June 30, 2015**.

This constitutes the Decision and Order of the Court.

DATED: May 12, 2015


HON. JOHN C. BIVONA, J.S.C.