

**STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY**

In the Matter of the Application of

Eckerd Corporation/Rite Aid Corporation,

Petitioner,

vs.

Patrick Mastro, Assessor, and The Board of
Assessment Review of the City of Schenectady,
Schenectady County, New York,

Respondents.

For review of a Tax Assessment under
Article 7 of the Real Property Tax Law

**NOTICE OF ENTRY OF
DECISION AND ORDER**

Index No.: 2010/1385

Tax Year: 2010

Judge: Hon. Thomas D. Buchanan

In the Matter of the Application of

Rite Aid Corporation/Eckerd Corporation,

Petitioner,

vs.

City of Schenectady Board of Assessment Review,
the Assessor of the City of Schenectady, and
the City of Schenectady, Schenectady County, New York,

Respondents.

For review of a Tax Assessment under
Article 7 of the Real Property Tax Law

**NOTICE OF ENTRY OF
DECISION AND ORDER**

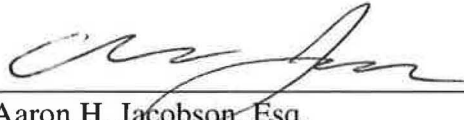
Index Nos.: 2011/1395
2012/1366
2013/1478
2014/1311
1646/2015
2016/1398

Tax Years: 2011, 2012, 2013
2014, 2015, 2016

Judge: Hon. Thomas D. Buchanan

PLEASE TAKE NOTICE that the attached document is a true copy of the Decision and Order of the Schenectady County Supreme Court in this proceeding, duly entered in the Schenectady County Clerk's Office on August 21, 2018.

Dated: August 28, 2018



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RIT01-Schenectady City-2009 (2010 State St)
(RIT01-70 & -144)

**STATE OF NEW YORK
SUPREME COURT COUNTY OF SCHENECTADY**

**In the Matter of the Application of
ECKERD CORPORATION/RITE AID CORPORATION,**

Petitioner,

Index No.: 2010-1385

vs.

**PATRICK MASTRO, ASSESSOR, and THE BOARD
OF ASSESSMENT REVIEW OF THE CITY OF
SCHENECTADY, SCHENECTADY COUNTY,
NEW YORK,**

**DECISION AND ORDER
AFTER TRIAL**

Respondents.

**In the Matter of the Application of
RITE AID CORPORATION/ECKERD CORPORATION,**

Petitioner,

**Index Nos.: 2011-1395
2012-1366
2013-1478
2014-1311
2015-1646
2016-1398**

vs.

**CITY OF SCHENECTADY BOARD OF ASSESSMENT
REVIEW, THE ASSESSOR OF THE CITY OF
SCHENECTADY and THE CITY OF SCHENECTADY,
SCHENECTADY COUNTY, NEW YORK,**

Respondents.

Buchanan, J.:

Pursuant to RPTL Article 7, Petitioner challenges the assessments for the years 2010-2016 for properties located at 1035 State Street and 1203 Eastern Avenue in the City of Schenectady.

FILED
08/21/2010 11:15:12 AM
County Clerk
JOHN J. WOODWARD
SCHENECTADY COUNTY, NY
Inst Num: 201037351

1035 State Street

The State Street property consists of a 10,908 square-foot, free-standing commercial building on a 1.37 acre parcel. The property was originally constructed as a free-standing drug store for Eckerd Corp. in 1999. It is located diagonally across State Street from a Rite Aid store. The completed project was sold for \$2,985,000.00 in the year 2000.

The property owner and tenant entered into a modified triple-net lease with a 20-year duration commencing on January 27, 2000, including four options to renew. The annual rent during the initial 20-year term was \$264,957.37. Thereafter, on or about October 10, 2008 Petitioner entered into a sublease with Aaron's Rent-a-Center for a ten-year term at an annual rent of \$88,810.00. Petitioner continues to pay rent to the owner for the full amount of \$264,957.32 per year. Petitioner contends that the market value of the State Street property is \$1,000,000.00 for the years 2010-2016. Respondent contends that the market value is \$2,500,000.00 for the years 2010-2012 and \$2,250,000.00 for the years 2013-2015. The equalization rate ranged from 100% in 2010 to 121% for 2015. Although no longer operated as a free-standing drugstore of a national chain for the years in question, Respondent's expert nevertheless considered the 2000 sale and lease terms in arriving at his conclusion. Petitioner's expert did not.

As noted in a similar case pending in this Court, the stark difference between the conclusions reached by each expert stems primarily from each expert's choice of the appropriate market from which to draw comparison. This Court concluded, on the facts of that particular case, that the appropriate market from which to draw comparison was the sub-market for the sale of first-generation, free-standing national chain drugstores (*Rite Aid Corp. v. Houlihan*, Index

Nos. 2008-1402 through 2014-1310 [issued concurrently with this Decision and Order]). That conclusion was based on a recent sale of the subject property and the fact that, during the years in question, the property continued to house a national chain drugstore under the terms of the original lease. As presented here, however, the proof has demonstrated a different set of facts.

Petitioner's expert contends that leases of first-generation, built-to-suit, national drugstore properties – including the 2000 sale of the subject property – should be excluded. He opines that those types of sales are investor driven, above market, and do not reliably reflect the value of a “fee simple” value of real estate. Petitioner contends that purchasers of first-generation free-standing drugstores overpay for those properties in order to secure a prime location for the operation of a national drugstore. On the other hand, Respondent's expert based his value on a comparison with first-generation, net-lease drugstores. Respondent contends that it would be inappropriate to use anything else because, on the taxable status date, the property was leased to a national-chain drugstore even though it was operated as a Rent-a-Center under a sublease,

A municipality's assessment is entitled to a presumption of validity which may be rebutted by substantial evidence (*Matter of FMC Corp v. Unmack*, 92 NY2d 179 [1998]). It has been held that Petitioner's methodology may be accepted as “plausible” for purposes of meeting the threshold burden (*see e.g. Matter of Eckerd Corp. v. Burin*, 83 AD3d 1239 [3d Dept 2011]; *but see Matter of Rite Aid Corp. v. Haywood*, 130 AD3d [4th Dept. 2015] [holding that failure to use comparable sales in the applicable sub-market renders the expert's conclusion invalid]).

Accordingly, Petitioner has met its initial burden. The Court must then weigh the entire record, including evidence of claimed deficiencies in the assessment, to determine whether Petitioner has established by a preponderance of the credible evidence that its property has been overvalued.

(*Unmack*, 92 NY2d at 179). In this Court's view, Petitioner has met that burden.

Petitioner called Mr. John MacAffer, a commercial real estate broker. Mr. MacAffer testified that, based upon his investigation, the State Street location operated as a drugstore from 2000-2005 and was vacant thereafter until 2008, at which time it was sublet to Aaron's Rent-a-Center. According to Mr. MacAffer, the drug store at this location closed due to theft and low sales. MacAffer testified that once a national chain drugstore closes, there are difficulties in marketing this type of property due to its odd size. MacAffer testified that common sizes for drugstores have increased since this location was built and that national drugstore chains typically have their own designs and do not move into existing buildings. He further testified that these properties are difficult to subdivide and require a large capital investment. Rather than being leased to other drugstores, MacAffer testified that potential tenants include tenants such as the one in this case, a Rent-a-Center. He noted that there are only three national drugstore chains, Rite Aid, CVS and Walgreens.

Presented with a building which last operated as a national drugstore in 2005, was vacant for three years, and is currently being operated as a Rent-a-Center pursuant to a sublease paying approximately one-third of the rent being paid under the main lease, Petitioner's expert included second generation-drugstores in his comparison analysis. Respondent's expert did not. In this Court's view, Petitioner's expert's conclusion carries more weight as it gives due consideration to the current use of the building and the appropriate comparable market. The State Street location has not operated as a national drugstore for over a decade, having sat vacant for three years before Petitioner was finally able to sublease the property at a loss. This must be given consideration in determining the appropriate market value. Accordingly, considering the entire record, the Court credits the testimony of Petitioner's expert and accepts his conclusion concerning the fair market value of the State Street location.

1203 Eastern Avenue

The Eastern Avenue property consists of a 12,706 square foot, free-standing commercial building custom built for Rite Aid in 1997 on .95 acres of land. It was sold in 1997 for \$2,725,000.00 and is subject to a long-term, triple-net lease with an annual rent of \$246,103.00. As in virtually every other case in which Mr. Holland has testified, Petitioner argues that the value of the property is inflated by an above-market lease, as it is a built-to-suit, first-generation drug store. He contends that on the applicable tax valuation dates, the value of the Eastern Avenue property was \$1,300,000.00 in 2008, \$1,230,000.00 in 2009, and \$1,170,000.00 for the remaining years at issue. Respondent contends that the market value of the Eastern Avenue property was \$2,740,000.00 in 2008 through 2011 and \$3,130,000.00 thereafter.

Respondent's expert testified that the 1997 sale for \$2,725,000.00 was considered in his analysis, while Petitioner's expert testified that the sale price was not relevant. The triple-net lease at issue has a 40-year duration with four separate options to renew. In both the income capitalization approach and the sales comparison approach, Respondent's expert utilized properties improved by single-tenant structures leased to national drugstore chains within the Capital District. These drugstores were very similar to the Eastern Avenue property in size, design, and age. Because of the similarity of these properties, only minimal adjustments were made by Respondent's expert.

Unlike Respondent's expert, Petitioner's expert utilized comparables which were not as similar as those selected by Respondent's expert. These included a pizza shop, a laundromat located in a former Eckerd store, an Advance Auto Parts building, and a former Rite Aid. With respect to the remaining comparables, which are first-generation drugstores, Petitioner's expert

applied adjustments ranging from 30% to 70%. In the companion case cited above, this Court found similar adjustments to be excessive and to weigh against the credibility of the conclusions derived therefrom.

Weighing all the evidence, the Court concludes that Respondent's expert's conclusions carry more weight than the conclusions reached by Petitioner's expert with respect to the Eastern Avenue location.

Based upon the foregoing, it is hereby


ORDERED, that the report and opinion of Petitioner's expert with respect to the value of the State Street property for the challenged years is hereby adopted as the Court's finding of value; and it is further

ORDERED, that the report and opinion of Respondent's expert with respect to the value of the Eastern Avenue property for the challenged years is hereby adopted as the Court's finding of value; and it is further

ORDERED, that the parties shall settle an order and judgment consistent with this decision.

Dated: *August 7, 2018*

ENTER.



Thomas D. Buchanan
Supreme Court Justice

CERTIFICATE OF SERVICE

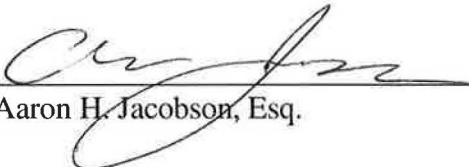
I, Robert Jacobson, hereby certify that I caused a copy of the Notice of Entry of Decision and Order to be served by depositing said document in the United States mail, first class, postage prepaid, addressed as follows:

Witness

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Dated: August 28, 2018


Aaron H. Jacobson, Esq.