

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

11 ELIZABETH WAY REALTY TRUST v. BOARD OF ASSESSORS OF
THE TOWN OF LYNNFIELD

Docket Nos. F338493 & F341424

Promulgated:
November 4, 2021

These are appeals filed 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 Lynnfield ("appellee" or "assessors") to abate taxes on certain real estate in Lynnfield, owned by and assessed to 11 Elizabeth Way Realty Trust ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal years 2019 and 2020 ("fiscal years at issue").

Commissioner DeFrancisco heard these appeals. Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him in the decisions for the appellee.

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.

Anne M. Vigorito, Esq., and Richard G. DiGirolamo, Esq. for the appellant.

Thomas A. Mullen, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and exhibits submitted during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

These appeals pertain to an approximately 20-acre improved parcel of land located in the town of Lynnfield with an address of 11 Elizabeth Way ("subject property"). Information relevant to the Board's jurisdiction is summarized in the following chart:

Tax year	Assessment	Tax amount Tax rate	Taxes timely paid?	Abatement application filed	Abatement decision date	Appeal filed with Board
2019	\$3,456,100	\$49,975.21 \$13.91/\$1,000	Yes	01/17/2019	03/26/2019	06/26/2019
2020	\$3,456,100	\$51,323.08 \$13.92/\$1,000	Yes	01/28/2020	03/03/2020 mailed on 5/27/20	06/30/2020 ¹

Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeals.

The subject property is improved with a single-family residence built in 1999 which, according to the property record cards for the fiscal years at issue, contains 7,316 square feet of finished living area and is comprised of eleven rooms, including

¹ The assessors mailed the notice of determination more than ten days after their decision on the appellant's abatement application, in violation of G.L. c. 59, § 63. The notice of determination was therefore invalid, and the Board ruled that the abatement application was deemed denied on April 28, 2020. See, e.g, *Stagg Chevrolet, Inc. v. Board of Water Commissioners of Harwich*, 68 Mass. App. Ct. 120, 124-6 (2007); *American House, LLC v. Assessors of Greenfield*, Mass. ATB Findings of Fact and Reports 2005-39, 57-8. The appellant thus had until July 28, 2020, to file its petition.

six bedrooms as well as six full bathrooms and one half bathroom ("subject home"). The subject home contains an additional 3,316 square feet of living area when including the finished basement, which is furnished with a wet bar, Thermador range, and wine cellar; the finished basement also includes an additional bedroom and a three-quarter bathroom on one side and an au pair suite on the opposite side. Other amenities of the subject home include an attached three-car garage and two fireplaces. The property record cards indicate that the kitchen and bathroom are of excellent quality.

The subject home sits at the end of a half-mile-long, gated driveway. Approximately six acres of the subject property are usable uplands with the remainder being wetlands. The subject home enjoys the privacy afforded by its surrounding land as well as by its location at the end of an exclusive subdivision road that overlooks protected public wetlands. The appellant uses the subject property as a luxury rental property, often to host celebrities, in an exclusive setting.

The appellant presented its case through the testimony of Leah Piantidosi, a real estate broker,² who also prepared and submitted a market analysis. Ms. Piantidosi testified to perceived deficiencies with the subject property. She indicated that most of

²The Board did not qualify Ms. Piantidosi as an expert witness but allowed her to testify as a lay witness, because she demonstrated sufficient knowledge of the subject property and the relevant market.

the subject property consists of wetlands, with only about four to six acres of usable land. She further testified that the subject home has not been modernized since construction and is somewhat dated, particularly with respect to its bronze finishes and original exterior.

Ms. Piantidosi then presented a market analysis using seven purportedly comparable luxury properties from Lynnfield. Five of the properties had sold, one was pending sale, and one was still an active listing. These properties ranged in parcel sizes from 0.63 acre to 5.95 acres and were improved with single-family homes ranging from 6,582 square feet to 9,500 square feet of living area. The five comparable-sale properties sold in transactions dating from December 2019 to October 2020 for prices ranging from \$1,400,000 to \$2,500,000. Based on her analysis, Ms. Piantidosi opined that the fair cash value of the subject property for the fiscal years at issue ranged from \$2,675,000 to \$2,775,000.

The appellee presented its case through the testimony of Assessing Manager Meredith Stone. Ms. Stone testified that the subject property was unique and magnificent, and it was the most valuable single-family residence in Lynnfield. Ms. Stone pointed out that the subject property's assessed value was \$3,456,100 for each of the fiscal years at issue, and that the appellant had purchased the subject property in May 2004 for \$3,200,000. The assessed values for the fiscal years at issue were thus

approximately eight percent higher than the price paid by the appellant roughly fourteen years prior to the relevant assessment dates. Ms. Stone maintained that the market for homes in Lynnfield had increased by far more than eight percent between the 2004 purchase of the subject property and the relevant assessment dates.

The appellee further pointed out that the subject property's assessed values did not account for the fact that the subject home had 3,316 additional square feet of living area in the basement, which was lavishly finished as described above. The basement amenities were not reflected on the property record card and were only discovered when the assessors conducted an inspection on November 5, 2020. The appellant indicated in its answers to interrogatories that there had been no improvements to the subject property in the three years preceding fiscal year 2019. The Board thus concluded that the additional 3,316 square feet of finished living area were existent but were not included in the assessments for the fiscal years at issue.

The Board found that a significant problem with Ms. Piantidosi's analysis was that the subject property was highly superior to all her comparable properties. None of her comparable properties sold in the \$3,000,000 range, and only one property sold for more than \$2,000,000. All the comparable properties' lots were significantly smaller than the subject property's nearly 20-acre lot; the largest comparable property's lot was 5.5 acres, and

the remaining lots were less than 1.5 acres. The Board thus found that the appellant's comparison properties were not sufficiently comparable to the subject property to provide meaningful valuation data. Moreover, Ms. Piantidosi did not provide any adjustments to the sale prices of her comparable properties for differences in features that typically affect fair cash value. The Board was therefore not persuaded by the appellant's evidence.

By contrast, the Board was persuaded by Ms. Stone's testimony, based on her experience and knowledge of the Lynnfield housing market, that fair cash values in Lynnfield had increased by more than eight percent in the fourteen years since the appellant had purchased the subject property. With respect to the subject property, the Board found an eight percent increase in value to be warranted, particularly where the assessment for the fiscal years at issue did not include the value of the richly finished basement area.

Therefore, the Board found that the appellant failed to meet its burden of proving a lower fair cash value for the subject property than its assessed value for each of the fiscal years at issue. Accordingly, the Board issued decisions for the appellee in these appeals.

[This space left intentionally blank.]

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).

A taxpayer has the burden of proving that a property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] 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)). "[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. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before the Board, taxpayers "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.***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. See **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929). "A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties." Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* 351 (15th ed., 2020).

In the instant appeals, the appellant's market analysis consisted of five comparable-sale properties, all of which paled in comparison to the subject property in terms of size, amenities, and privacy. The Board found that these properties were "fundamentally dissimilar" to the subject property "and therefore not sufficiently comparable to derive meaningful valuation evidence." **Sterling v. Assessors of Arlington**, Mass. ATB Findings of Fact and Reports 2021-76, 89; see also **Lareau v. Assessors of Norwell**, Mass. ATB Findings of Fact and Reports 2010-879, 894. Moreover, the appellant's witness did not adjust her properties to compensate for the various factors that would cause disparities in comparable prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082. "Adjustments for differences in the elements of comparison are made to the price of each comparable property The magnitude of the adjustment made for each element of

comparison depends on how much that characteristic of the comparable property differs from the subject property." THE APPRAISAL OF REAL ESTATE at 377-78. Without adjustments, the Board found and ruled that the appellant's comparable-sales analysis did not provide probative evidence of the fair cash value of the subject property.

Furthermore, the subject property's assessment represented an eight-percent increase from the price paid by the appellant approximately fourteen years prior to the fiscal years at issue. The Board found persuasive Ms. Stone's testimony that this increase was reasonable, and in fact conservative, for the subject property's real estate market, particularly when considering that the assessment for the fiscal year at issue did not include the added value of the richly finished additional basement living area. See, e.g., *Lupacchino v. Assessors of Southborough*, Mass. ATB Findings of Fact and Reports 2008-1253, 1264 (finding the assessors' comparable-sale values were appropriately adjusted upward to account for the added value of the subject property's finished basement living area).

Based on the evidence of record, the Board found and ruled that the appellant failed to meet its burden of proving a fair cash value for the subject property that was lower than its assessed values for the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in the instant appeals.

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