

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ALFRED J. ANTONUCCI

v.

BOARD OF ASSESSORS OF
THE TOWN OF NORTH READING

Docket Nos. F334936, F334937,
F334938

Promulgated:
January 14, 2020

These are appeals heard 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 North Reading ("appellee" or "assessors") to abate taxes on certain real estate located in North Reading owned by and assessed to Alfred J. Antonucci ("appellant") for fiscal year 2018 ("fiscal year at issue").

Commissioner Rose ("Presiding Commissioner") heard these appeals under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued single-member decisions for the appellant.

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.

Alfred J. Antonucci, pro se, for the appellant.

Debbie Carbone, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

As of January 1, 2017, the relevant assessment date for the fiscal year at issue, the appellant was the assessed owner of several industrial condominium units located at 126 Main Street in North Reading, including Units 8, 9, and 11, which are the subject of these appeals (collectively the "subject condominium units").

Relevant jurisdictional facts are summarized in the following table:

Condominium Unit	Assessed Value	Tax Amount/ Tax Rate (per \$1,000 of value)	Taxes Timely Paid (Y/N)	Abatement Application Filed	Date of Denial	Date Petition Filed
Unit 8	\$248,200	\$4,055.59 \$16.34	Y	02/01/2018	02/02/2018	05/01/2018
Unit 9	\$251,700	\$4,112.78 \$16.34	Y	02/01/2018	02/02/2018	05/01/2018
Unit 11	\$159,600	\$2,607.86 \$16.34	Y	02/01/2018	02/02/2018	05/01/2018

Based on these facts, the Presiding Commissioner found and ruled that the Appellate Tax Board ("Board") had jurisdiction over the instant appeals.

The appellant presented his case through his own testimony and comparable-assessment analysis as well as the testimony and appraisal reports of Thomas E. Brown, whom the Presiding Commissioner qualified as an expert in the area of industrial property valuation ("appellant's appraiser").

A brief description of each of the subject condominium units follows.

Unit 8

Unit 8 is a 1,001-square-foot industrial condominium unit used by the appellant as an auto repair shop. The unit's overall condition and finish - including concrete floor, concrete block walls, and steel roof decking and truss - are typical for its use as an auto repair garage. This unit includes an unfinished mezzanine, the only access to which is from a lift or through a hole in the wall from Unit 9 next door. While the rough plumbing for one exists, there is no lavatory. Unit 8 was assessed at \$248,200, or \$247.95 per square foot, for the fiscal year at issue.

Unit 9

Unit 9 is a 1,015-square-foot industrial condominium unit used by the appellant's son as an auto repair shop. The unit's overall condition and finish - including concrete floor, concrete block walls, and steel roof decking and truss - are typical for its use as an auto repair garage. This unit includes an unfinished mezzanine, the only access to which is from older wooden stairs. Unit 9 includes a lavatory. Unit 9 was assessed at \$251,700, or \$247.98 per square foot, for the fiscal year at issue.

Unit 11

Unit 11 is a 685-square-foot condominium unit formerly used as office space but vacant as of the relevant time for these

appeals. The appellant's appraiser opined that Unit 11 has limited appeal as a business office because it is located in an industrial complex, and it also has limited appeal to contractors for an office because it does not include a warehouse/shop area. Unit 11's overall condition and finish are dated, and deferred maintenance issues are present, including broken windows, limited finish on the stairway, and unfinished plywood flooring. Unit 11 is located over an auto repair and auto body shop, and resulting noise and odor are noticeable. Unit 11 was assessed at \$159,600, or \$232.99 per square foot, for the fiscal year at issue.

The appellant's evidence

The appellant testified that the subject condominium units are part of a condominium building with eleven total units, which he has owned since it was built in 1987. The appellant sold eight of the units and retained the three subject condominium units. The appellant testified that, prior to the eight condominium sales, each unit was an identical industrial-style condominium, but after the sales, individual unit owners expanded and improved their units to include finished mezzanines with features like kitchens, full bathrooms, and finished office space. The appellant claimed that, in comparing the assessments of the units within the condominium building, the subject condominium units were being unfairly assessed at about the same value as condominium units that had increased square footage from improved mezzanine space. The

appellant submitted a chart detailing the square footage and improvement of each unit with improved space within the condominium building to illustrate that several of these units were being assessed less per square foot than the unimproved subject condominium units.

Next, the appellant's appraiser testified and presented his appraisal reports. Pertinent details of his reports are summarized below.

Unit 8 and Unit 9

The appellant's appraiser completed a comparable-sale analysis using eight purportedly comparable condominium units located within about two miles of the subject condominium units. These condominium units sold from March 2016 to August 2017. After adjustments for location, condition, construction, finished office area, and existence of a lavatory, these condominium units yielded adjusted per-square-foot sale prices that ranged from \$95.10 to \$222.90, with a mean of \$153.02 and only one sale exceeding \$200 per square foot. The lower-valued per-square-foot sales were for three larger units, approximately twice the size of Units 8 and 9, located within the same condominium complex; the remaining five sales indicated an adjusted range of per-square-foot values from \$139.83 to \$222.90, with a mean of \$176. Excluding the three lower-valued sales and placing equal weight on the remaining five sales, the appellant's appraiser concluded that the fair market value for

Unit 8 and Unit 9 was \$175 per square foot. For Unit 8, the appellant's appraiser calculated a total rounded value of \$175,000, and for Unit 9, he calculated a total rounded value of \$178,000.

Unit 11

The appellant's appraiser completed a comparable-sale analysis using three purportedly comparable condominium units located within about one mile of the subject condominium units. These condominium units sold from March 2016 to December 2016. After adjustments for location and condition, these condominium units yielded adjusted per-square-foot sale prices from \$94.51 to \$109.59, with a mean of \$104.56. The appellant's appraiser placed the most weight on Sale 1, the lowest-value sale, because of its comparability with Unit 11, particularly its overall inferior condition. The appellant's appraiser concluded that the fair market value for Unit 11 was \$95 per square foot, for a total rounded value of \$65,000.

The appellee's evidence

In defense of the assessments, the appellee presented the testimony and comparable-sale analysis of Debbie Carbone, assessor for the Town of North Reading ("assessor"), as well as evidence including copies of the property record cards and deeds for the subject condominium units.

The assessor testified that she does not value mezzanine space equally with floor space. Upon inspection of the property record cards for various condominium units, however, the Presiding Commissioner determined that the mezzanine space was not even reflected, and thus not valued at all. For example, the assessor acknowledged that Unit 2 in the same complex as the subject condominium units was 1,998 square feet, which included the finished mezzanine office space, but its property record card documented only 999 square feet of office space.

The Presiding Commissioner's conclusions

With respect to Units 8 and 9, the Presiding Commissioner found that the appellant's appraiser's Comparable 5 - Unit 3 in the same condominium building as the subject condominium units - was the most comparable property. Being in the same condominium building, Comparable 5 is also located on Main Street, which the Presiding Commissioner found to be a prime industrial location, and thus highly comparable to the subject condominium units. Comparable 5 is a 987-square-foot, unimproved, industrial condominium unit, which sold on August 16, 2017 for \$225,000, reflecting a per-square-foot value of \$227.96. After adjustments for Unit 8's and Unit 9's inferior conditions, the Presiding Commissioner found that \$201.97 was an appropriate square footage valuation for both Units 8 and 9.

With respect to Unit 11, the Presiding Commissioner found that the comparable-sale properties offered by the appellant's appraiser were not sufficiently comparable to the subject condominium units for meaningful comparison. The Presiding Commissioner further noted, however, that Unit 11's assessment rose from \$126,700 in fiscal year 2017 to \$159,600 in the fiscal year at issue, reflecting a significant increase in one fiscal year. With no improvements to Unit 11, the Presiding Commissioner found that this increase was not justified. The Presiding Commissioner instead found that the fiscal year 2017 assessment of Unit 11 best reflected its fair cash value for the fiscal year at issue.

The Presiding Commissioner thus determined fair market values and calculated abatements as follows:

F334938 Unit 8	F334937 Unit 9	F334936 Unit 11
Assessed value = \$248,200	Assessed value = \$251,700	Assessed value = \$159,600
Fair cash value = \$202,200 ¹ 1,001 sf @ \$201.97	Fair cash value = \$205,000 ² 1,015 sf @ \$201.97	Fair cash value = \$126,700
Abated value = \$46,000	Abated value = \$46,700	Abated value = \$32,900
Tax Rate = \$16.34 per \$1,000	Tax rate = \$16.34 per \$1,000	Tax rate = \$16.34 per \$1,000
Abatement = \$751.64	Abatement = \$763.08	Abatement = \$537.59

Accordingly, the Presiding Commissioner issued decisions in favor of the appellant in the instant appeals and ordered

¹ Rounded.

² Rounded.

abatements as follows: \$751.64 (F334938), \$763.08 (F334937), and \$537.59 (F334936).

OPINION

The 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 of them 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 the 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 taxpayer[] sustain[s] the burden of proving the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

In appeals before this Board, a taxpayer "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)).

The appellant contended that the subject condominium units were being unfairly assessed for more than their fair market value. To meet his burden of proof, the appellant offered his own comparable-assessment analysis of the units within the same condominium building as well as the testimony and appraisal report of his valuation expert, who performed a sales-comparison analysis. Properties whose assessed or sale values are relied upon must be sufficiently comparable to the property at issue in order to be probative of fair cash value. See **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972). Further, purportedly comparable properties must be adjusted for differences with the property at issue. See **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 402, *aff'd*, 73 Mass. App. Ct. 1107 (2008). A comparable-sale analysis must include "fundamental similarities" between the subject property and the comparison properties. **Lattuca v. Robsham**, 442 Mass. 204, 216 (2004). The appellant bears the burden of "establishing the comparability of . . . properties [used for comparison] to the subject property." **Fleet Bank of Mass. v. Assessors of Manchester**, Mass. ATB Findings of Fact and Reports 1998-546, 554. "Once basic comparability is established, it is then necessary to make adjustments for the differences, looking

primarily to the relative quality of the properties, to develop a market indicator of value." ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981).

In the instant appeals, the Presiding Commissioner found that one of the appellant's appraiser's comparable-sale properties, Comparable 5, was the most comparable to Units 8 and 9 for meaningful comparison. After adjustment for its superior condition as compared with Units 8 and 9, Comparable 5 yielded a fair market value of \$201.97 per square foot, for a total indicated value of \$202,200 for Unit 8 and of \$205,000 for Unit 9.

With respect to Unit 11, the Presiding Commissioner found that none of the appellant's appraiser's comparable-sale properties were sufficiently comparable to Unit 11 for meaningful comparison. However, the Presiding Commissioner noted a substantial increase in Unit 11's assessment from the prior fiscal year. The Presiding Commissioner found no justification for this considerable increase in the absence of any modifications to Unit 11 and further found and ruled that its prior year assessment more accurately reflected its fair market value for the fiscal year at issue.

The Presiding Commissioner need not specify the exact manner in which he arrived at a property's valuation. See ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical

certainty and must ultimately rest in the realm of opinion, estimate and judgment." *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 72 (1941). In evaluating evidence before it, the Presiding Commissioner selected among the various elements of value and formed his own independent judgment of fair cash value. *General Electric Co.*, 393 Mass. at 605. "The credibility of witnesses, the weight of evidence, and the inferences to be drawn from the evidence are matters for the [Presiding Commissioner]." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

Based on all the evidence, the Presiding Commissioner found and ruled that each of the subject condominium units was overvalued for the fiscal year at issue.

Conclusion

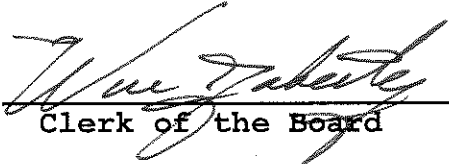
The Presiding Commissioner found and ruled that the appellant met his burden of proving fair market values for the subject condominium units that were less than their assessed values. The Presiding Commissioner found the following values for each of the subject condominium units: \$202,200 for Unit 8; \$205,000 for Unit 9; and \$126,700 for Unit 11.

Accordingly, the Presiding Commissioner issued decisions for the appellant and ordered abatements as follows: \$751.64 (F334938), \$763.08 (F334937), and \$537.59 (F334936).

THE APPELLATE TAX BOARD

By: 
James D. Rose, Commissioner

A true copy,

Attest: 
Clerk of the Board