**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**MICHAEL BASS, TRUSTEE OF THE  v.   BOARD OF ASSESSORS OF**

**CARL M. YOUNGMAN IRREVOCABLE    THE TOWN OF HARWICH**

**TRUST OF 2007**

Docket No. F331832 Promulgated:

 May 16, 2018

 This is an appeal heard and decided under the formal procedure, pursuant to G.L. c. 58A, § 7[[1]](#footnote-1) and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Harwich (“appellee” or “assessors”) to abate taxes on certain real estate in Harwich, owned by and assessed to Michael Bass, Trustee of the Carl M. Youngman Irrevocable Trust of 2007 (“appellant”), under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

 Commissioner Chmielinski heard this appeal. Chairman Hammond and Commissioners Scharaffa and Good joined him in the decision 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.

 *Carl Youngman, pro se*, for the appellant.

*Donna Molino,* Director of Assessing, for the appellee.

**Findings of Fact and Report**

On the basis of the testimony and exhibits introduced at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2015, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a condominium unit located at 1-2-7 Belmont Road in Harwich (“subject property”). For assessment purposes, the subject property is identified as “Parcel ID 1-C1-7.”

For the fiscal year at issue, the assessors valued the subject property at $518,500 and assessed a tax thereon, at the rate of $9.07 per thousand, in the total amount of $4,843.88.[[2]](#footnote-2) On December 31, 2015, Harwich’s Collector of Taxes sent out the town’s actual real estate tax bills for the fiscal year at issue. In accordance with G.L. c. 59, § 57C, the appellant paid the tax due without incurring interest. On January 5, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on March 29, 2016. On June 29, 2016, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed his appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

 Located at the condominium complex known as The Belmont, which is a gated community, the subject property is a townhouse-style condominium, with a total of 5 rooms, including 2 bedrooms and also 3 full and 1 half bathrooms, with a total living area of 1,997 square feet. Additional amenities include a finished basement, central air conditioning, and a deeded-parking space. Residents of the condominium complex also have access to a private beach, a pool, an on-site restaurant, tennis courts, and on-site management. For the fiscal year at issue, the assessors listed the subject property’s condition as good on the property record card and assigned it an adjustment factor of 1.25.

In support of his claim that the subject property was overvalued for the fiscal year at issue, the appellant relied on the testimony of Carl Youngman, and also offered into evidence several documents without objection from the assessors, including: the subject property’s property record card for the fiscal year at issue; a letter itemizing the costs of improvements to the subject property; and a self-prepared packet of materials.

Mr. Youngman testified that the subject property was purchased on December 24, 2014 for $330,000 and at that time it required substantial renovations. A letter from Ellis Builder, LLC, the contractor that performed the renovations in the spring of 2015, indicated that the total cost was $130,000; the assessors did not disagree with or otherwise challenge this figure.

The packet that the appellant offered into evidence included a self-prepared listing of 19 assessments of 2-bedroom condominiums located in the same complex, which ranged from $344,000 to $507,400. The only other information about these properties that the appellant included was whether they had finished basements. The appellant also included in his packet of materials the Multiple Listing Service (“MLS”) listing sheets of 3 condominiums located in the same complex with purported sale prices ranging from $357,000 to $470,000.

Based on the appellant’s assessments and sales listings, and also Mr. Youngman’s testimony regarding purported defects in the subject property and subsequent improvements, the appellant argued that the subject property was overvalued for the fiscal year at issue. The assessors rested on the validity of their assessment.[[3]](#footnote-3)

 Based on the evidence presented, the Board found that the appellant met his burden of proving that the subject property was overvalued for the fiscal year at issue. With respect to the appellant’s assessment and sales listings, however, the Board found that the appellant failed to offer any documentation to verify the information provided including, property record cards or deeds pertaining to the assessments and sales transactions. Moreover, even assuming the information provided by the appellant was complete and accurate, the appellant failed to make adjustments to account for differences between the purportedly comparable properties and the subject property. The Board therefore found that the appellant’s packet of materials was of little value in determining the subject property’s fair market value for the fiscal year at issue.

The Board did find, however, that the sale of the subject property, which occurred one week prior to the relevant assessment and valuation date for the fiscal year at issue, plus the uncontested costs associated with the subject property’s renovations, were credible and indicative of the subject property’s fair market value as of the June 30, 2015 valuation date for purposes of G. L. c. 59, § 2A. Recognizing that a small downward adjustment was warranted to account for the unlikelihood that the appellant would recoup the total expenditures associated with renovating the subject property, the Board found and ruled that the subject property’s fair market value was $455,000 for the fiscal year at issue.

 Accordingly, the Board issued a decision for the appellant and granted abatement in the amount of $593.23, inclusive of the appropriate portion of the CPA surcharge.

**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).

 The appellant has the burden of proving that the subject property has a lower value than that assessed. “The burden of proof is upon the petitioner to make out his 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 this Board, the 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. v. Assessors of Lynn,*** 393 Mass. 591, 600 (1984)(quoting***Donlon v. Assessors of Holliston,*** 389 Mass. 848, 855 (1983). Here, the appellant presented the timely sale of the subject property coupled with recently incurred renovation expenditures. The actual sale of the subject property itself is “‘very strong evidence of fair market value, for [it] represent[s] what a buyer has been willing to pay to a seller for [the property under appeal].’” ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (quoting ***First Nat’l Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971)). *See****Freniere v. Assessors of Wellesley*,** Mass. ATB Findings of Fact and Reports 2012-124, 129-30 (finding that a sale of the subject property six months before the relevant assessment date was the best evidence of the subject's fair cash value). See also G.L. c. 59, § 2A (authorizing the assessors to include in the assessed value of a property the cost of certain improvements made up to 6 months beyond the valuation and assessment date).

Recent sales of comparable properties in the market may "furnish strong evidence of market value[.]" ***Foxboro Associates v. Assessors of Foxborough,*** 385 Mass. 679, 682 (1982). Additionally, evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. *See* G.L. c. 58A, § 12B; ***John Alden Sands v. Assessors of Bourne*,** Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing ***Chouinard v. Assessors of Natick*,** Mass. ATB Findings of Fact and Reports 1998-299, 307-308). However, adjustments must be made to account for differences between the subject property and the properties offered for comparison. See***Doherty v. Assessors of Lee,*** Mass. ATB Findings of Fact and Reports 2013-174, 181 (citing ***Lareau v. Assessors of Norwell,*** Mass. ATB Findings of Fact and Reports 2010-879, 889-90 ("The assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must also be adjusted to account for differences with the subject.")(citation omitted)).

The Board need not specify the exact manner in which it arrived at its valuation. ***Jordan Marsh 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***, 309 Mass. 60, 72 (1941). In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605.  “The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the [Presiding Commissioner].” ***Cummington School of the Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

Based on all of the evidence, the Board found and ruled that the most probative evidence of the subject property’s fair market value for the fiscal year at issue was the December 24, 2014 sale of the subject property for $330,000, plus the renovation costs of $130,000, with a small downward adjustment to account for the unlikelihood that the appellant would recoup the total cost of the improvements. The Board therefore found and ruled that the subject property’s fair market value for the fiscal year at issue was $455,000. Accordingly, the Board decided this appeal for the appellant and granted an abatement in the amount of $593.23, inclusive of the appropriate portion of the CPA surcharge.

 **THE APPELLATE TAX BOARD**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_       Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. In accordance with G. L. c. 58A, § 7A, the appellee timely elected to transfer this appeal, originally filed under the informal procedure, to the formal procedure. [↑](#footnote-ref-1)
2. This amount includes a Community Preservation Act (“CPA”) surcharge in the amount of $141.08. [↑](#footnote-ref-2)
3. Subsequent to the hearing of this appeal, the assessors submitted to the Board documentation verifying that Harwich had adopted the provisions of G.L. c. 59, 2A, which allowed the town to include in the subject property’s fiscal year 2016 assessment improvements that occurred between January 1, 2015 and June 30, 2015. [↑](#footnote-ref-3)