COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

THOMAS W. CHARRON, TRUSTEE	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF WELLESLEY**
Docket No. F333378		Promulgated: January 14, 2020

This is an appeal 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 Wellesley ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Wellesley owned by and assessed to Thomas W. Charron, Trustee of the Billchar Realty Trust ("appellant") for fiscal year 2017 ("fiscal year at issue").

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

Thomas W. Charron, pro se, for the appellant.

Donna M. Brewer, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2016, the relevant assessment date for the fiscal year at issue, the appellant was the assessed owner of a 68,157-square-foot lot with an address of 209 Cliff Road in Wellesley ("subject property"). The appellant purchased the subject property, along with an adjoining parcel that is not at issue in this appeal, on April 7, 2011 for $6,800,000.

Relevant jurisdictional facts are summarized in the following table:

Fiscal Year	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 With Board
2017	$5,881,000	$69,336.99 $11.79	Y	01/19/2017	04/19/2017	07/19/2017

Based on these facts, the Board found and ruled that it had jurisdiction over the instant appeal.

The subject property is improved with a single-family, two-and-a-half-story, brick, Tudor-style Colonial home ("subject home"). The subject home was originally constructed in 1938, expanded in 1999 with a two-story addition, and substantially renovated between 1999 and 2007. The Wellesley Building Department permits on file state an estimated cost of $1,093,350 for the

renovations. According to the property record card on file with the appellee, the subject home contains 9,842 square feet of living area consisting of fifteen rooms, including seven bedrooms, as well as six full bathrooms and two half bathrooms. The subject home offers high-quality, designer materials and workmanship, such as: a two-story marble-floored entry foyer; a living room with a fireplace and wood-beamed ceiling and carved-wood paneling; a dining room with two corner china cabinets, crown molding, and a bay window; a family room with a carved-stone fireplace and French doors opening to a patio and pool area; a second-floor master suite with his-and-her dressing rooms and a master bathroom with marbled flooring, jetted soaking tub, and walk-in jetted shower; and a kitchenette on the third floor. For the fiscal year at issue, the portion of the subject property's assessment assigned to the subject home was $4,198,000, which the appellant does not contest.

The subject property also includes an outdoor patio and pool area, which the appellee assessed at $72,000. The appellant also does not contest this portion of the assessment.

The appellant's evidence

The appellant contended that the land portion of the subject property ("subject land") was overvalued and disproportionally assessed. For assessment purposes, the subject land was divided into one lot of 48,157 square feet, assessed at $952,000 ("primary lot"), and a second lot of 20,000 square feet, assessed at $659,000

("secondary lot"), for a total assessment of $1,611,000 for the subject land. The appellant contended that the highest and best use for the subject property was not as two separate buildable lots each improved with a single-family home, but instead as a single buildable lot improved with one single-family home, commensurate with its actual use.

The appellant presented copies of maps and property record cards for the subject property and for five purportedly comparable properties in order to compare these properties' assessments as single lots with the subject property's assessment as two lots. The appellant further presented a spreadsheet listing the land-portion assessment of dozens of purportedly comparable properties in Wellesley. The appellant purported to establish that lots comparably sized or even larger than the subject land, with comparable lengths or more of street frontage, were being assessed as one single lot, not as two separate lots, and further, that these purportedly comparable lots were being assessed at lower values per square foot than the subject land's value of $23.64 per square foot.

Using the map of the subject property, the appellant further contended that the presence of wetlands on the subject property impeded further development of the secondary lot. On cross-examination, the appellant admitted that the maps of other nearby properties indicated development within wetlands or wetland-buffer

areas. The appellant did not introduce any expert witnesses to testify to the possibility of development on the secondary lot.

Finally, the appellant submitted into evidence a spreadsheet listing sales in Wellesley from 2016 through 2018 with sale prices over $3,000,000. His listing included such data as: size of parcel; style of home; year built; living area; and number of rooms, including bedrooms, and number of bathrooms. The appellant referred to this listing to contend that overall sale prices in Wellesley during the past three years were far lower than the subject property's overall assessment. The appellant did not make any adjustments to his comparable properties' sale prices to account for differences between those properties and the subject property that affect fair market value.

The appellee's evidence

The appellee presented its case through the testimony of Donna McCabe, Chief Assessor for Wellesley ("assessor"), and the testimony and appraisal report of Elaine M. Flynn, whom the Board qualified as an expert in the area of residential real estate valuation ("appellee's appraiser").

The appellee first presented the testimony of the assessor. She testified that the subject property is located in an area classified as Market Area 103, the Cliff Estates neighborhood, which is one of the higher-valued areas in Wellesley. She further explained that the appellee considered the secondary lot's size

and the amount of its frontage in determining that it should be assessed as a buildable lot. However, recognizing the limitations presented by wetlands, the appellee applied a discount of twenty-five percent to the secondary lot.

The assessor then referred to the appellee's land schedule for the fiscal year at issue, which the appellee used to determine values for the land portion of property assessments. The land schedule relies on both neighborhood codes and parcel sizes for its valuations. Referring to the schedule, she explained that the valuation of land is not simply a calculation based purely on a parcel's size, testifying that "twice the size lot doesn't equal twice the value."

Finally, the assessor cited other purportedly comparable properties in Wellesley that were being assessed with secondary lots. In particular, the assessor pointed to the assessment of 9 Pierce Road, which, like the subject property, was assessed as two buildable lots. The assessor concluded that the assessment of the subject property was consistent with the assessments of properties to which it is comparable.

Next, the appellee's appraiser testified and presented her appraisal report to the Board. The appellee's appraiser first analyzed the highest and best use for the subject property. She agreed with the appellant that the subject property's current use

as a lot improved with a single-family residential dwelling was its highest and best use.

The appellee's appraiser next provided a sales approach to value the subject property. For this approach, she selected four purportedly comparable properties located within half a mile of the subject property that had sold between July 1, 2013 and May 12, 2016. Three of these four properties were located in the Cliff Estates neighborhood, the same prime neighborhood as the subject property. She applied adjustments to the sale prices for the following differences: site condition[1]; site size; dwelling square footage; construction quality; and motivation of buyers.[2]

After adjustments, the purportedly comparable properties yielded indicated values between $6,700,000 and $7,050,000. Giving greater consideration to Sales 2 and 3, which she found to be the most comparable properties, the appellee's appraiser selected $6,850,000 as the indicated value for the subject property.

The subject property was assessed at less than the appellee's appraiser's opinion of its fair market value. Therefore, the appellee contended that the subject property was not overvalued for the fiscal year at issue.

---

[1] The appellee's appraiser considered each property's landscaping and privacy.
[2] The buyers of Sale 3 lived across the street from the property and "were highly motivated and paid a premium price."

The Board's determination

The Board did not find the appellant's valuation evidence to be credible. Stating that the land component was the only component that he was disputing, the appellant focused on perceived errors in the appellee's valuation of the subject land, particularly whether the subject land was incorrectly classified as two buildable lots and whether its per-square-foot assessment was comparable to other purportedly comparable land lots.

The appellant's evidence ultimately missed the mark. While the appellee's appraiser agreed with the appellant that the subject property's highest and best use was as a single buildable lot, the appellant nonetheless failed to prove that the subject property's overall assessment did not reflect its fair cash value.

The appellant's evidence consisted of spreadsheets listing the purportedly comparable properties' land assessments or their total sale amounts. The appellant made no adjustments to these raw values for differences that would affect fair market value, including the subject property's high-end finishes or its location in a prime neighborhood. Without sufficiently comparable properties for his analysis, the Board found that the appellant's valuation evidence lacked probative value for determining the fair market value of the subject property.

The appellant's evidence also did not take into account the common and accepted assessing practice of recognizing that as unit

size increases, unit value decreases. As the assessor aptly explained, "twice the size doesn't equal twice the value" when comparing land values in any given city or town. Moreover, the assessment already included a discount to account for potential limitations to development of the secondary lot, including the presence of wetlands.

By contrast, the appellee's appraiser submitted an analysis of comparable-sale properties that included three properties in the subject property's Cliff Estates neighborhood. She then made appropriate adjustments to their sale prices to reflect differences between those properties and the subject property that affect value. The Board found that these properties' sale prices, as adjusted, supported the subject property's total assessed value.

Based on the evidence, the Board found and ruled that the appellant failed to meet his burden of proving a fair market value for the subject property that was lower than its assessed value.

Accordingly, the Board issued a decision for the appellee in this appeal.

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 both agree if they 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)).

In the present appeal, the appellant contended that the land component of the assessment was too high. The appellant primarily contended that the subject property should have been assessed as a single buildable lot, commensurate with its actual use.

"Prior to valuing the subject property, its highest and best use must be ascertained, which has been defined as the use for which the property would bring the most." ***Tennessee Gas Pipeline Co. v. Assessors of Agawam***, Mass. ATB Findings of Fact and Reports 2000-859, 875 (citing ***Conness v. Commonwealth***, 184 Mass. 541, 542-43 (1903)); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989)(and the cases cited therein). A property's highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive. Appraisal Institute, THE APPRAISAL OF REAL ESTATE 61 (14th ed., 2013); *see also* ***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 687 (1972); ***DiBaise v. Town of Rowley***, 33 Mass. App. Ct. 928 (1992). Here, the appellee's expert conceded that the subject property's highest and best use was as a lot improved with one single-family residence, in keeping with its actual use.

Nonetheless, the appellant failed to prove that the subject property was overvalued. A taxpayer does not conclusively establish a right to abatement merely by showing that the land portion of his property is overvalued or improperly classified. "The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately." ***Assessors of Brookline v. Prudential Insurance Co.***, 310 Mass. 300, 317 (1941). In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including

both the land and the structures thereon, is excessive." ***Massachusetts General Hospital v. Belmont,*** 238 Mass. 396, 403 (1921); *see also* ***Buckley v. Assessors of Duxbury***, Mass. ATB Findings of Fact and Reports 1990-110, 119; ***Jernegan v. Assessors of Duxbury,*** Mass. ATB Findings of Fact and Reports 1990-39, 49. The appellant's contention that the appellee erred in its valuations of separate portions of the subject property does not resolve the issue of whether the subject property's total assessment reflects its fair cash value. *See* ***Lareau v. Assessors of Norwell***, Mass. ATB Findings of Fact and Reports 2013-1066, 1084 (citing ***Pistorio v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2010-206, 214-15).

Although the appellant did submit evidence pertaining to total valuation, in the form of a spreadsheet listing the total sale values of purportedly comparable properties, his evidence lacked probative value. 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).

The appellant did not focus on gathering comparable properties from the Cliff Estates neighborhood, the market area in which the subject property was located. The appellant also made no adjustments to his comparable-sale properties for differences that would affect their fair market value and, therefore, their comparability with the subject property, including location and high-end finishes. The appellant's comparative analysis was thus fundamentally flawed and carried little weight.

Additionally, the appellant's comparison of the value-per-square-foot of his lot with the value-per-square-foot of larger lots is not informative for a fair market analysis. The Board recognizes that "[g]enerally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase." Appraisal Institute, THE APPRAISAL OF REAL ESTATE 198 (14th ed., 2013); ***Finigan v. Assessors of Belmont***, Mass. ATB Findings of Fact and Reports 2004-533, 537 ("One cannot take a unit of value for a given parcel and apply that unit value to increase the value of a larger parcel or decrease the value of a smaller one.").

Moreover, the subject property's assessment was already discounted for the presence of wetlands, and the appellant did not

demonstrate that this discount was insufficient to compensate for the wetlands.

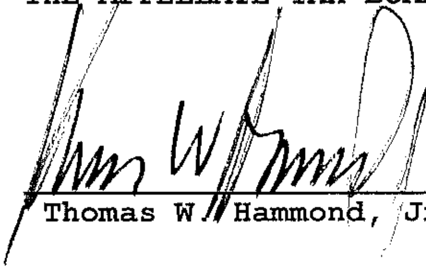
In defense of the subject property's overall assessment, the appellee's appraiser presented an appraisal report that included a comparable-sales analysis. The Board found that the appellee's appraiser selected properties that were reasonably comparable to the subject property, particularly the three properties from the Cliff Estates neighborhood. The Board further found that she applied appropriate adjustments to these properties' sale prices to account for differences that affect fair market value. The subject property's overall assessment was well within the range of the comparable properties' adjusted sale prices. The Board thus found and ruled that the subject property's overall assessment was consistent with the overall assessments for other comparable-sale properties in the subject property's neighborhood and therefore, was appropriate.

Conclusion

The Board found and ruled that the appellant failed to meet his burden of proving a fair market value for the subject property that was less than its assessed value.

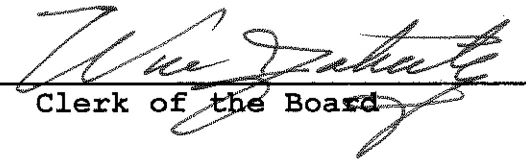
Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD



By: Thomas W. Hammond, Jr., Chairman

A true copy,



Attest: Clerk of the Board