

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CONCERNED CITIZENS FOR
SPRINGFIELD, INC.

v.

BOARD OF ASSESSORS OF
THE CITY OF SPRINGFIELD

Docket Nos. F328078
F334702

Promulgated:
August 13, 2019

These are appeals under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Springfield ("assessors" or "appellee") to abate a tax on real estate located in the City of Springfield, owned by Concerned Citizens for Springfield, Inc. ("appellant" or "Concerned Citizens"), for fiscal years 2015 and 2018 ("fiscal years at issue").

Commissioner Elliott heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him in the decision for the appellee in Docket No. F328078 (fiscal year 2015) and the decision for the appellant in Docket No. F334702 (fiscal year 2018).

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.

Russell L. Seelig, Secretary of appellant, for the appellant.

Robert P. Shewchuk, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2014 and January 1, 2017, the relevant dates of assessment for the fiscal years at issue, the appellant was the assessed owner of a 9,076-square-foot parcel of real estate located at 26-30 White Street in the City of Springfield ("subject property"). The subject property is located at the corner of White and Revere Streets and is improved with a two-story, four-unit residential apartment building with a finished living area of 4,032 square feet.

For fiscal year 2015, the assessors valued the subject property at \$164,200 and assessed a tax thereon, at the rate of \$19.67 per \$1,000, in the total amount of \$3,229.81. The appellant paid the tax due without incurring interest. On January 20, 2015, the appellant timely filed an abatement application with the assessors, which the assessors denied on April 14, 2015. The appellant timely filed its petition with the Appellate Tax Board ("Board") on July 9, 2015.

For fiscal year 2018, the assessors valued the subject property at \$195,500 and assessed a tax thereon, at the rate of

\$19.68 per \$1,000, in the total amount of \$3,875.63.¹ The appellant paid the tax due without incurring interest. On January 10, 2018, the appellant timely filed an abatement application with the assessors, which the assessors denied on April 4, 2018. The appellant filed its petition with the Board on January 22, 2018.²

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

In support of its claim that the subject property was overvalued for the fiscal years at issue, the appellant relied on the testimony of Russell L. Seelig, Secretary for Concerned Citizens. To arrive at his opinions of value, Mr. Seelig testified that he reviewed the subject property's annual net income for calendar years 2012 through 2017, inclusive, and calculated an average net operating income of \$10,798. He then applied a capitalization rate of 10% and estimated a fair market value of \$107,980, which he rounded to \$100,000 for both fiscal years at issue.

The appellant also offered into evidence the subject property's property record cards for the fiscal years at issue, which detailed the assessors' income-capitalization analyses.

¹ The total tax amount for fiscal year 2018 includes a Community Preservation Act ("CPA") surcharge of 1.5%.

² Although the appellant's abatement application had not yet been denied, premature filing of a petition is not fatal to the Board's jurisdiction. *Becton, Dickinson & Co. v. State Tax Commission*, 374 Mass. 230, 234 (1978).

Mr. Seelig argued that the assessors' potential gross income figure of \$42,600 listed on the fiscal year 2018 property record card was excessive. He testified that the subject property could not generate that level of income.

For their part, the assessors introduced several exhibits, including the requisite jurisdictional documents, as well as the relevant income and expense statements for the fiscal years at issue, provided to them by the appellant. These statements, along with local market data, formed the basis of their income-capitalization analyses outlined on the subject property's property record cards. The assessors also engaged in a brief cross-examination of Mr. Seelig, focusing on the appellant's above-market management fee calculated at 10%, several other above-market expenses, and the large fluctuations on the income and expense reports between the two years.

After considering all of the evidence presented, the Board found that the appellant failed to prove that the subject property was overvalued for fiscal year 2015. First, the Board adopted the assessors' potential gross income, which was based on market data and also closely approximated the appellant's reported income for calendar year 2013. Second, the Board found that the assessors' suggested vacancy rate of 15% was excessive based on the subject property's experience and found that a vacancy factor of 7.5% was more appropriate. In addition, the

Board found that the appellant's reported expenses for calendar year 2013, which totaled \$23,776, were in excess of 60% of the reported income, while in contrast, the assessors utilized a local market factor of 48% of the effective gross income. More particularly, the Board found that the appellant's expenses, which included a 10% management fee, questionable reserves for contingencies, as well as other contested items, were excessive. Once recalculated and considering the assessors' 48% expense factor, the Board found that an expense factor of 50% was appropriate. Lastly, using the assessors' recommended capitalization rate of 10.5%, the Board found and ruled that the assessed value did not exceed its calculation of the fair cash value of the subject property and therefore the subject property was not overvalued for fiscal year 2015.

With respect to fiscal year 2018, the Board found that the appellant met its burden of proving that the subject property was overvalued. First, based on Mr. Seelig's testimony that the subject property could not generate the rents suggested by the assessors during the relevant time period for this fiscal year, the Board adopted a 5% reduction in the assessors' recommended potential gross rent. The Board then used the same vacancy rate of 7.5% to calculate an effective gross income of \$37,435. Again, the Board found that, for similar reasons to those expressed for fiscal year 2015, the appellant's reported

expenses for calendar year 2016 were excessive and determined that an expense factor of 50% was appropriate. Lastly, the Board adopted the assessors' same capitalization rate of 10.5%, which reflected the stability in the market and local rates. On this basis, the Board found and ruled that the subject property's rounded fair cash value for fiscal year 2018 was \$180,000.

Based on these findings, the Board found that the subject property was not overvalued for fiscal year 2015, but was overvalued by \$15,500 for fiscal year 2018. Accordingly, the Board issued a decision for the appellee in Docket No. F328078 (fiscal year 2015) and a decision for the appellant in Docket No. F334702 (fiscal year 2018) granting an abatement of \$309.62, inclusive of CPA surcharge.

OPINION

The assessors are required to assess all real property at its full and fair cash value. G.L. c. 59, § 28; *Coomey v. Assessors of Sandwich*, 367 Mass. 836, 837 (1975). 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 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 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, 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 appeals, the appellant relied on the testimony of Mr. Seelig to prove that the assessors overstated the subject property's potential gross income for fiscal year 2018. Moreover, the affirmative evidence of value in the record indicated that the subject property's value for fiscal year 2015 exceeded its assessed value while its value for fiscal year 2018 was lower than its assessed value.

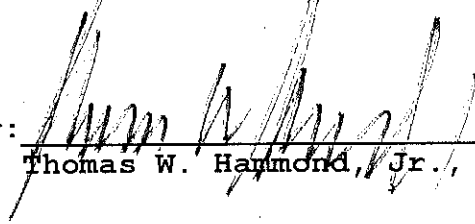
The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." *Assessors of Quincy v. Boston*

Consolidated Gas Co., 309 Mass. 60, 72 (1941). In reaching its decision in these appeals, the Board was not required to believe the testimony of any particular witness or adopt any particular method of valuation that a witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. 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 board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

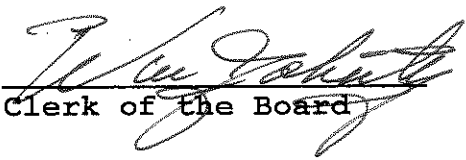
Based on all the evidence presented in these appeals, the Board found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for fiscal year 2015, but met its burden of proving that the subject property was overvalued by \$15,500 for fiscal year 2018.

Accordingly, the Board issued a decision for the appellee in Docket No. F328078 (fiscal year 2015) and a decision for the appellant in Docket No. F334702 (fiscal year 2018) granting abatement of \$309.62, inclusive of CPA surcharge.

THE APPELLATE TAX BOARD

By: 
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 
Clerk of the Board