COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CRAFTS AVENUE REALTY TRUST v. BOARD OF ASSESSORS OF THE CITY OF NORTHAMPTON

Docket No. F339301

Promulgated:
September 21, 2021

This is an appeal 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 City of Northampton ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Northampton owned by and assessed to Alan and Marguerite Hankowski, trustees of the Crafts Avenue Realty Trust ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Rose, Elliott, and Metzer joined her 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.

Alan Hankowski, pro se, for the appellant.

Marc Dautreuil, Principal Assessor, *and David Murphy,* Chairman, 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.

On January 1, 2018, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 0.041-acre parcel of land improved with a mixed-use apartment and office building ("subject building") located at 24 Crafts Avenue in Northampton ("subject property").

For the fiscal year at issue, the assessors valued the subject property at $556,500 and assessed a tax thereon, at a rate of $17.37 per $1,000, in the total amount of $9,956.40, inclusive of a Community Preservation Act surcharge. The appellant timely paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application on January 29, 2019, which was deemed denied on April 29, 2019. On June 29, 2019, the appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject building is a two-story, mixed commercial and residential use building containing approximately 3,600 square feet of gross building area. The subject building is comprised of two commercial units on the first floor, including Mr. Hankowski's accounting office, and three one-bedroom apartments on the second floor. The assessors grade the subject property as a C+.

In support of its claim that the subject property was overvalued for the fiscal year at issue, the appellant offered the testimony of Mr. Hankowski, an owner of the subject property. Mr. Hankowski argued that the subject property was overvalued and unfairly assessed in comparison to nearby commercial/residential properties. He testified that the subject property’s assessed value increased by 8.1 percent from the prior fiscal year despite its age and lack of updates, while nearby properties with significant improvements experienced increases of only 2.1 percent. The appellant did not, however, offer any evidence to support this claim.

The appellant also offered into evidence the testimony of and appraisal report prepared by Gary L. Aldrich, a licensed real estate appraiser, whom the Board qualified as an expert in real estate valuation. To begin his analysis, Mr. Aldrich determined that the subject property’s highest and best use was its continued use as a mixed-use commercial and residential building. Although he considered the three approaches to value, he developed valuation analyses using the sales-comparison and income-capitalization approaches, finding both methods to be appropriate for the subject property.

For his sales-comparison analysis, Mr. Aldrich selected five purportedly comparable mixed-use properties located in Northampton that ranged in size from 1,800 square feet to 7,110 square feet. The properties sold between October 2015 and March 2017 with sale prices that ranged from $123.03 to $285.62 per square foot. After adjustments for differences in location, site size, quality, condition, and gross building area, Mr. Aldrich's purportedly comparable sales yielded adjusted sale prices that ranged from $119.05 to $171.37 per square foot.

Mr. Aldrich determined that the cited comparable sales are similar mixed-use buildings compared to the subject property located within proximity and therefore all were informative of the value of the subject property. Given the subject property's location, just off Main Street, and its average condition, Mr. Aldrich selected a rate of $140.00 per square foot as the indicated value for the subject property's total area of 3,360 square feet, which yielded a rounded fair cash value of $470,000.

Next, Mr. Aldrich prepared an income-capitalization approach to value the subject property. First, he developed a gross income estimate based on the subject property's existing rent roll as well as a survey of market rents for mixed-use commercial/office/residential space located in the immediate area. Based on the commercial strength of downtown Northampton and the available market data, Mr. Aldrich determined that the subject property’s actual rental income of $56,400 was slightly below average and instead relied on market rental data to calculate a potential gross income of $59,080. After examining current market conditions and the subject property’s actual vacancy, Mr. Aldrich concluded that a vacancy and collection-loss rate of two percent was appropriate to calculate an effective gross income (“EGI”) of $57,898.

For operating expenses, Mr. Aldrich compared the subject property’s actual expenses to comparable properties in the immediate market area and reconciled with typical industry standards. He then allowed the appellant’s actual expenses for real estate taxes, property insurance, utilities, water/sewer, and snow removal in his operating-expenses analysis. Mr. Aldrich also allowed deductions for management, calculated at seven percent of EGI; maintenance, calculated at three percent of EGI; reserves and replacement, calculated at two percent of EGI; and lastly, miscellaneous, calculated at one percent of EGI. His total expenses amounted to $24,436, which he deducted from EGI to arrive at a net operating income of $33,462. Lastly, using a band-of-investment analysis and a review of published rates and market extracted rates for similar-type properties, Mr. Aldrich selected a capitalization rate of 7.5 percent. Dividing his net operating income by his chosen capitalization rate yielded a rounded fair cash value of $445,000.

Mr. Aldrich relied on the two approaches equally and, after taking into consideration all factors that affect value, concluded that the subject property's fair market value for the fiscal year at issue was $460,000.

For their part, the assessors did not present any affirmative evidence of value. Instead, they pointed out a significant flaw in Mr. Aldrich's income-capitalization analysis, specifically his allowance of an expense for real estate taxes in computing the subject property's net operating income. The assessors maintained that real estate taxes are properly accounted for by adding the appropriate tax factor to the base capitalization rate. Moreover, the assessors maintained that even accepting all of Mr. Aldrich's other figures, including his base capitalization rate, and then properly accounting for the real estate taxes, the analysis supports the subject property's assessed value for the fiscal year at issue. Lastly, the assessors contended that Mr. Aldrich's comparable-sales analysis lacked any probative value.

Based on the evidence presented, the Board found that the appellant failed to meet its burden of proving that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. The Board found Mr. Aldrich's appraisal report unpersuasive. First, with respect to his comparable-sales analysis, the Board found that the properties that sold at the low and high ends of the range were smaller and larger, respectively, than the subject property and therefore the Board gave them less weight. The Board further found that the remaining sales supported the subject property's assessment for the fiscal year at issue. As for his income-capitalization approach, the Board found that it was an error for Mr. Aldrich to include real estate taxes as an item of expense instead of as a tax factor added to his capitalization rate. The Board further found that accepting all of Mr. Aldrich's other figures, including his base capitalization rate, but adding the appropriate tax factor, resulted in a value that supported the subject property's assessment for the fiscal year at issue.

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 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 taxpayer has the burden of proving that the property's fair cash value is lower than its assessed value. "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)).

In appeals before the 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). "[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.***, 393 Mass. at 598 (quoting ***Schlaiker***, 365 Mass. at 245).

Generally, real estate valuation experts, the Massachusetts courts, and the Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redev. Authority***, 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation[.]" ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986). "[S]ales of property usually furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Assessors of Foxborough,*** 385 Mass. 679, 682 (1982). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. ***Graham v. Assessors of West Tisbury,*** Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929)), *aff'd* 73 Mass. App. Ct. 1107 (2008).

Properties are "comparable" when they share "fundamental similarities" with the property at issue, including age, location, and size. *See* ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). The taxpayer bears the burden of "establishing the comparability of . . . properties [used for comparison] to the subject property." ***Silvestri v. Assessors of Lowell,*** Mass. ATB Findings of Fact and Reports 2012-926, 935. *Accord* ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981). "[B]asic comparability is established upon considering the general character of the properties." ***Id.*** "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.,*** 383 Mass. at 470.

The income-capitalization method is "frequently applied with respect to income-producing property." ***Taunton Redev. Assocs. V. Assessors of Taunton,*** 393 Mass. 293, 295 (1984). Under the income-capitalization approach, valuation is determined by dividing net operating income by a capitalization rate. *See* ***Assessors of Brookline v. Buehler,*** 396 Mass. 520, 522-23 (1986). After accounting for vacancy and rent losses, the net operating income is obtained by deducting the appropriate expenses. ***Pepsi-Cola Bottling Co.,*** 397 Mass. at 452-53. "The issue of what expenses may be considered in any particular piece of property is for the board." ***Alstores Realty Corp. v. Assessors of Peabody***, 391 Mass. 60, 65 (1984).

In the present appeal, the Board found that Mr. Aldrich's appraisal report unpersuasive. First, with respect to his comparable-sales analysis, the properties that sold at the low and high ends of the range were significantly smaller and larger, respectively, than the subject property and therefore the Board gave them less weight. The Board further found that the remaining three sales supported the subject property's assessment for the fiscal year at issue. As for his income-capitalization approach, the Board found that it was an error for Mr. Aldrich to include real estate taxes as an item of expense instead of as a tax factor added to his capitalization rate. The Board further found that accepting all of Mr. Aldrich's other figures, including his base capitalization rate, but adding the appropriate tax factor, resulted in a value that supported the subject property's assessment for the fiscal year at issue.

As previously noted, the burden of proving a value that is lower than the assessed value is firmly on the taxpayer. *See* ***Schlaiker***, 365 Mass. at 245. Based on the evidence presented, the Board found and ruled that the appellant failed to meet its burden of proving a value for the subject property that was less than its assessed value for the fiscal year at issue.

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

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