

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

TERRENCE J. CURRIER

v.

BOARD OF ASSESSORS OF  
THE TOWN OF WEST TISBURY

Docket No. F336581

Promulgated:  
June 8, 2020

This is an appeal filed under the formal procedure<sup>1</sup> 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 West Tisbury ("appellee" or "assessors") to abate taxes on real estate located in the Town of West Tisbury, owned by and assessed to Terrence J. Carrier ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 ("fiscal year at issue").

Commissioner Elliott heard this appeal. Chairman Hammond and Commissioners Rose, Good, and Metzger 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.

*Terrence J. Carrier, pro se*, for the appellant.

*Ellen M. Hutchinson, Esq.* for the appellee.

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<sup>1</sup> The appeal was originally filed under the informal procedure, but the appellee timely elected to have the appeal transferred to the formal docket.

## FINDING OF FACT AND REPORT

On the basis of the 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, 2017, the appellant was the assessed owner of a 2.92-acre parcel improved with a single-family residence located at 225 Great Plains Road in West Tisbury ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,003,600 and assessed a tax thereon, at a rate of \$6.06 per \$1,000, in the total amount of \$6,081.82, plus a Community Preservation Act ("CPA") surcharge fee of \$164.27. The appellant timely paid the real estate taxes due without incurring interest.<sup>2</sup> In accordance with G.L. c. 59, § 59, the appellant timely filed an application for abatement on January 31, 2018. The assessors granted a partial abatement on March 15, 2018, reducing the subject property's assessment to \$963,600. Not satisfied with that reduction, on June 14, 2018, the appellants seasonably filed an appeal under the informal procedure with the Appellate Tax Board ("Board"). Subsequently, on July 11, 2018, within 30 days of the date of service of the informal petition, the assessors elected to

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<sup>2</sup> The appellee filed a Motion to Dismiss for Lack of Jurisdiction, which it later withdrew, citing a late payment of taxes for the fourth quarter. Based on documents submitted at the hearing, the Board found that the payment was timely mailed. See G.L. c. 59, § 57C (for purposes of determining jurisdictional interest requirements, if a real estate tax payment is received after the due date, the date of mailing is deemed to be the date of delivery). Accordingly, in accordance with § 57C, the fourth-quarter payment was timely.

transfer the appeal to the Board's formal docket. See G.L. c. 58A, §7A. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is improved with a single-family, wood-frame, Cape-Cod-style dwelling with one and three-quarters stories and an unfinished basement ("subject home"). The property record card on file with the appellee indicates that the subject home has 2,369 square feet of living area and is comprised of six rooms, including four bedrooms, as well as three full bathrooms and one half bathroom.

The subject home's first floor has an open floor plan with Brazilian cherry floors throughout. The kitchen features custom cabinets, granite counters, and stainless-steel appliances, while the living room has cathedral ceilings with skylights, extra-large windows, recessed lighting, and a wood-burning-stove fireplace. The first-floor master bedroom suite includes double closets and a bathroom with double granite vanities. The subject home's other amenities include central air conditioning, a mahogany farmer's porch with granite steps and columns at the front, and a screened-in, three-season porch at the rear.

The deed entered into the record indicates that the appellant purchased the subject property on December 21, 2015 for a purchase price of \$1,050,000. The appellant testified that \$5,000 of the

purchase price was allocated to furniture that was also transferred pursuant to the sale.

The appellant contended that the purchase price of \$1,050,000, paid just over a year prior to the relevant assessment date, did not represent the fair market value of the subject home. First, the appellant testified that he and his wife were living in London while searching for a home, and therefore could not devote their full time to the purchase of a property; they instead had to rely on their broker's advice. The appellant also testified that the seller had a "need" to sell the property, and thus the appellant felt pressured to make the purchase.

The appellant further asserted that the subject property had a defect at the time of the sale, which he contended was not disclosed prior to his purchase. On August 13, 2017, a serious plumbing leak resulted in extensive damage to the subject property. The appellant submitted into evidence copies of pictures depicting the damages and a loss summary prepared by his insurance adjustor, which reflected an insurance claim of \$65,654.53 to repair and restore the subject home. As part of his abatement application, the appellant had previously submitted to the assessors a loss summary that reflected a lesser amount of \$39,089.06. Based on the circumstances surrounding his purchase and the subsequent damages, the appellant asserted that the fair market value for the subject property was \$822,900 for the fiscal year at issue.

Next, the appellant introduced a comparable-sales analysis using nine purportedly comparable properties from West Tisbury, seven of which sold and two of which were listed as "offers to purchase." These purportedly comparable properties sold from September 28, 2015 to April 18, 2019 for prices that ranged from \$1,050,000 to \$1,257,500. According to the appellant, these sales yielded values per square foot ranging from \$197.11 to \$235.40. Without explanation, the appellant concluded that the best indicator of value for the subject property was \$218.02 per square foot, which generated a value for the subject property of \$840,000. The appellant concluded that \$840,000 was his opinion of the fair market value for the subject property for the fiscal year at issue based on his comparable-sales analysis. The appellant did not provide any adjustments for his purportedly comparable properties to account for differences that affect fair market value, including but not limited to: number of rooms, bedrooms and bathrooms; condition, style and workmanship; lot size; and location.

The appellee cross-examined the appellant and presented evidence that included the deed by which the appellant had purchased the property and a copy of the insurance loss summary statement that he had submitted with his abatement application. The cross-examination highlighted several weaknesses in the appellant's analysis, including the fact that several of his purportedly comparable properties were multi-building properties

and had other style and type differences from the subject property, yet the appellant did not make adjustments to their sale prices to reflect those differences. The deed confirmed the purchase price of \$1,050,000 for the subject property, which the appellant paid approximately one year prior to the relevant valuation date. Finally, the insurance loss statement that the appellant submitted to the appellee with his abatement application indicated a building-damage claim amount of \$39,089.06, which was less than the amount of the loss statement that the appellant submitted as evidence to the Board.

Upon evaluating the evidence before it, the Board found that the most compelling evidence of the subject property's fair market value was its purchase by the appellant for \$1,050,000 approximately one year prior to the relevant assessment date. The Board found that neither his living in London during his home search nor the seller's motivation to sell, even if substantiated, constituted a lack of arm's-length negotiating. These situations at most suggested inconvenience, not duress. The appellant also failed to present any evidence demonstrating that the relevant market had declined between the sale date and the relevant assessment date. The appellant thus failed to offer a credible and definitive basis for why the Board should not rely on his purchase price for the subject property.

Moreover, despite the appellant having paid \$1,050,000 for the subject property, the appellee assessed the subject property at \$1,003,600 and then granted a further abatement to \$963,600, representing a greater than \$85,000 reduction from the price he paid approximately one year prior to the assessment date. This abatement exceeded the larger of the two insurance claims that the appellant presented.

With respect to his comparable-sales analysis, the appellant failed to adjust any of his comparable properties' sale prices for differences between them and the subject property that affect fair market value. Without appropriate adjustments, the appellant's purportedly comparable properties could not provide meaningful comparison with the subject property. The Board thus found that the appellant's comparable-sales analysis lacked probative value.

On the basis of the foregoing, the Board found and ruled that the appellant failed to establish that the subject property's assessment as abated exceeded its fair market value. Accordingly, the Board issued a decision in this appeal for the appellee.

#### **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 will agree if

both 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 fair market value than the value 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 taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

The sale of the subject property, approximately one year prior to the relevant assessment date, is persuasive evidence of the subject property's fair cash value. "Actual sales 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). Actual sales of the subject are "very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the] particular property [under appeal]." ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981) (quoting ***First National Stores, Inc. v. Assessors of***



**Somerville**, 358 Mass. 554, 560 (1971)). The Board here found and ruled that the appellant's purchase of the subject property approximately one year prior to the assessment date was reasonably proximate to the assessment date, and that, absent a conclusive showing that the sale was not made at arm's length, the sale price of \$1,050,000 supported the assessment as abated of \$963,600.

The appellant suggested that he may have overpaid for the subject property. The facts he raised were that he and his wife were searching for homes from a long distance, and that the seller was motivated to sell the subject property. The Supreme Judicial Court, however, has "given a narrow definition to the 'compulsion' that requires exclusion of evidence of a sale." **The Westwood Group, Inc. v. Assessors of Revere**, 391 Mass. 1012, 1013 (1984) (citing **United-Carr, Inc. v. Cambridge Redevelopment Authority**, 362 Mass. 597, 600 (1972)). Situations involving "duress, fraud, or imperative need for immediate cash at any cost" preclude a free market. **Epstein v. Boston Housing Authority**, 317 Mass. 297, 300 (1944).

The Board has found that facts amounting to mere expediency or convenience do not establish compulsion. For example, while the taxpayers in **Kane v. Assessors of Topsfield**, Mass. ATB Findings of Fact and Reports 2000-409, 411 presented evidence indicating that "the seller was motivated to receive the best price possible for the sale of his home," this evidence alone did not establish that

the taxpayers were under undue influence to make the purchase. Therefore, "the record failed, by any standard, to demonstrate duress or compulsion" necessary to overcome the "strong evidence of value offered by the assessors in the form of a sale of the subject property for more than its assessed value." *Id.* at 2000-412, 413. The Board here likewise found that the appellant's assertions failed to demonstrate duress or compulsion. The Board thus found and ruled that the sale of the subject property for \$1,050,000, approximately one year prior to the relevant assessment date and absent any evidence of a decline in the relevant market, was the best evidence of the value of the subject property on the relevant assessment date and sufficiently supported its assessment as abated for \$963,600.

To discredit the sale price he paid, the appellant presented evidence of a defect with the subject property, which he asserted was not disclosed at the time of the sale. The appellant submitted an insurance loss statement to the Board reflecting \$65,654.53 in damages to the subject home. He had previously submitted another insurance loss statement to the appellee with his abatement application, that one reflecting a different, lesser amount. The appellee accepted the appellant's evidence of damage and granted a partial abatement that was greater than the larger of the appellant's two loss statements. Regardless of any discrepancy in the actual damage amount, the Board found and ruled that the

subject property's assessment as abated sufficiently compensated for the damage to the subject property.

Finally, the appellant presented a comparable-sales analysis to support his opinion that the subject property was overvalued. 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 subject property, including age, location and size. See **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). ("[B]asic comparability is established upon considering the general character of the properties."). See also **New Boston Garden Corp.**, 383 Mass. at 470. ("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.")

The appellant's comparable-sales analysis, however, was merely a generic summary of sale prices from purportedly comparable properties in West Tisbury without any adjustments to compensate for differences from the subject property that would affect fair market value, including but not limited to size, location,

condition, and style. The Board thus found and ruled that, without evidence of the comparability to the subject property, the comparable-sales analysis lacked persuasive value. See **Lupacchino v. Assessors of Southborough**, Mass. ATB Findings of Fact and Reports 2008-1253, 1269.

On the basis of the evidence of record, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property's assessment exceeded its fair cash value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in the instant 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