

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WILLIAM H. DARLING &
ELIZABETH A. BREUHAUS

v.

BOARD OF ASSESSORS OF
THE TOWN OF MARBLEHEAD

Docket No. F334439

Promulgated:
May 23, 2019

This is an appeal under the formal procedure¹ 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 Marblehead ("assessors" or "appellee") to abate a tax on an improved parcel of real estate located in the Town of Marblehead, owned by William H. Darling and Elizabeth A. Breuhaus ("appellants") for fiscal year 2017 ("fiscal year at issue").

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

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

William H. Darling and Elizabeth A. Breuhaus, pro se, for the appellants.

William Tumulty, assistant assessor, for the appellee.

¹ The appellants originally filed under the informal procedure. Subsequently, on July 24, 2017, pursuant to G.L. c. 58A, § 7A, the appellee elected to transfer the appeal to the formal procedure.

FINDINGS 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, 2016, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 43,387-square-foot improved parcel of real estate located at 4 Crowninshield Road in the Town of Marblehead ("subject property"). Relevant jurisdictional information is summarized in the following table:

Original valuation	Tax rate	Tax amount	Taxes timely paid Y/N	Abatement application filed	Abatement application approved in part by assessors	Valuation as abated	Petition filed with Appellate Tax Board
\$2,942,000	\$11.01 per \$1,000	\$32,391.42	Y	01/31/2017	03/30/2017	\$2,649,600	06/30/2017

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

At the hearing of this appeal, the appellants presented their case through the testimony of Mr. Darling and the submission of exhibits. The subject property is improved with a 108-year-old, two-and-a-half story, single-family residence ("subject home") containing 5,330 square feet of living area and consisting of eleven rooms, including six bedrooms, as well as three full bathrooms and one half bathroom, plus a partially

finished basement. The subject property, in the Peach's Point area of Marblehead, is across the street from the shoreline on Crowninshield Road, but it enjoys unobstructed views of the ocean, as well as road access to a private dock and mooring.

The appellants presented a comparable-sales-and-assessment analysis using five purportedly comparable properties, which, like the subject property, are located in the Peach's Point neighborhood of Marblehead and are considered shoreline properties. Their sale prices ranged from \$1,200,000 to \$2,475,000. The appellants presented this analysis in order to compare the assessed values at the times of their sales to the sale prices of these five properties; the assessed values ranged from 55 percent to 80 percent of their respective sale prices. The appellants submitted photographs and basic information for three of these five sales. The comparative information for these properties is summarized below:

Property	Subject property	3 Eustis Road	6 Davis Road	1 Aldrich Terrace
Year built	1910	1930	1900	1915
Living area	5,260 sq. ft.	5,000 sq. ft.	3,170 sq. ft.	6,554 sq. ft.
Bedrooms	5	8	6	7
Bathrooms	3.5	6	3.5	5
Location	Peach's Point	Peach's Point	Peach's Point	Peach's Point
Sale date	01/01/2016 ³	12/22/2016	04/15/2016	03/30/2015
Sale price	n/a	\$2,475,000	\$1,700,000	\$1,700,000
Assessed value ²	\$2,649,600	\$4,508,900	\$2,958,400	\$2,119,200

² Assessed value at time of sale.

³ Relevant assessment date for fiscal year at issue.

Mr. Darling also testified to the difficulties the appellants have experienced in attempting to sell the subject property. He testified that large, older homes like the subject home are far less in demand, and that the subject home is considered by brokers to be a tear-down property or at the very least to require a complete "gut" renovation. The appellants submitted a listing history of the subject property showing that it had been listed for \$3,300,000 in 2012, reduced to \$2,900,000 in 2013, rented in 2014, listed for \$2,700,000 in 2015, and that an offer was made in 2016 for \$1,500,000. The appellants took the subject property off the market in 2017 and have since rented it on an annual basis for \$4,500 per month. The appellants' opinion of value for the subject property is \$1,800,000.

The appellee presented its case through the testimony of Michael Tumulty, an assessor with the town. Mr. Tumulty presented the property record card and photographs of the subject property and its views of the ocean. He next provided a comparable-sales analysis of properties purportedly comparable to the subject property. Mr. Tumulty's sales occurred between November 2, 2015 and July 16, 2018, with two sales occurring in November 2015 and the remaining from July 2017 onward. These properties' sale prices ranged from \$2,375,000 to \$4,250,000. Mr. Tumulty did not offer any adjustments to his purportedly

comparable properties for differences between them and the subject property that would affect fair market value.

Mr. Tumulty used none of the Peach's Point sales that the appellants cited in their analysis. Mr. Tumulty did cite a later sale of 12 Davis Road, a Peach's Point property used by the appellants in their analysis. However, Mr. Tumulty cited the sale from October 23, 2017 for \$4,250,000, not the earlier October 12, 2015 sale for \$1,650,000 that the appellants cited. The later sale was for a brand new, 5,570-square-foot home, thus indicating that the earlier sale was effectively a land sale with a tear-down home.

On the basis of the evidence, the Board found that the sales cited by the appellants were overall more similar to the subject property than were the sales offered by the appellee, particularly with respect to their location on Peach's Point, and the fact that they included older, early twentieth-century homes. The Board found credible Mr. Darling's testimony that the subject home is considered to be a tear-down, or at the very least to require a complete "gut" renovation, particularly in light of the October 15, 2015 sale of 12 Davis Road for \$1,650,000 and its subsequent resale two years later with a brand new residence. Overall, the appellants' evidence supported their contention that the subject property's assessment exceeded its fair market value for the fiscal year at issue.

On the basis of the evidence submitted, the Board found that the subject property's fair market value for the fiscal year at issue was \$2,100,000, which was at the higher end of the Peach's Point sales offered by the appellants.

On the basis of this reduction in value, the Board issued a decision for the appellants and granted an abatement as follows:

Fiscal year	Assessed value	Fair cash value	Overvaluation	Abatement amount
2017	\$2,649,600 ⁴	\$2,100,000	\$549,600	\$6,051.10

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 appellants have 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

⁴ As abated.

assessors [is] valid unless the taxpayer[] . . . prov[es] the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

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.*, 393 Mass. at 600 (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)). The appellants here offered affirmative evidence of value, including a comparable-sales-and-assessment analysis, which included comparative details for three of their comparable properties, and the testimony of Mr. Darling concerning the appellants' experience with attempting to sell the subject property.

Real estate valuation experts, the Massachusetts courts, and this Board generally rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. *Correia v. New Bedford Redevelopment Authority*, 375 Mass. 360, 362 (1978).

"[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, *aff'd*, 73 Mass. App. Ct. 1107 (2008). When comparable sales are used, however, allowances must be made for various factors that would otherwise cause disparities in the comparable properties' sale prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082.

The Board found that the appellants' comparable-sales analysis provided probative evidence of overvaluation in the present appeal. The appellants' comparable properties, like the subject property, were located in Peach's Point and included early twentieth-century homes. Once adjusted for differences, the Board found that the sale prices of these properties supported a reduction in the subject property's assessed value. The comparable-sale property of 12 Davis Road was particularly instructive. When reviewed in conjunction with its subsequent sale, and with Mr. Darling's credible testimony regarding the challenges of selling the subject property, the Board found that the October 2015 sale was essentially a land sale. The Board used this sale, as well as the other Peach's Point sales offered

by the appellants, to arrive at a fair market value of \$2,100,000 for the subject property for the fiscal year at issue.

In evaluating the evidence before it, the Board is entitled to rely upon its expertise and form its own independent judgment of fair cash value. *General Electric Co.*, 393 Mass. at 605; *North American Philips Lighting Corp. v. Assessors of Lynn*, 392 Mass. 296, 300 (1984). 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 Consol. Gas Co.*, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." *Cummington School of the Arts, Inc. v. Assessors of Cummington*, 373 Mass. 597, 605 (1977).

The Board applied these principles in reaching its opinion of the fair cash value of the subject property during the fiscal year at issue in this appeal. On this basis, the Board found and ruled that the appellants met their burden of proving a value for the subject property that was lower than its assessed value.

Accordingly, the Board issued a decision for the appellants and granted an abatement in the amount of \$6,051.10.

THE APPELLATE TAX BOARD

By: 
Thomas W. Hammond, Chairman

A true copy,

Attest:


Clerk of the Board