

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PAUL DiBARI

v.

BOARD OF ASSESSORS OF
THE CITY OF BOSTON

Docket No. F343097

Promulgated:
April 28, 2023

This is an appeal filed 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 Boston ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Mary DiBari¹ and to Paul DiBari ("appellant" or "Mr. DiBari") for fiscal year 2021 ("fiscal year at issue").

Commissioner Elliott heard the appeal. He was joined by Chairman DeFrancisco and Commissioners Good and Metzger 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.

Paul DiBari, pro se, for the appellant.

Laura Caltenco, Esq., for the appellee.

¹ Mary DiBari is not an appellant in this appeal.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary evidence submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2020, the appellant was an assessed owner of a 4,300-square-foot parcel of land improved with a two-family dwelling located at 28 Belfort Street in the City of Boston ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$725,400 and assessed a tax thereon, at the rate of \$10.67 per \$1,000, in the total amount of \$4,622.20, exclusive of the residential exemption and inclusive of the Community Preservation Act surcharge. The appellant timely paid the tax assessed without incurring interest. On January 29, 2021, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on March 16, 2021. On June 15, 2021,² the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

²While the petition was stamped as received by the Board on June 23, 2021, it was mailed in an envelope postmarked June 15, 2021. Pursuant to G.L. c. 58A, § 7, the Board considered the date of postmark to be the date of filing.

The subject property's two-family dwelling was constructed in 1905 and contains a total of 2,730 square feet of living area; each unit consists of five rooms, including two bedrooms, as well as one full bathroom ("subject dwelling"). The exterior is clad in aluminum siding, and the kitchens and bathrooms have not been remodeled since the subject dwelling's construction.

The Board heard the instant appeal together with the appeal concerning 24 Belfort Street (F343098), also owned in part by the appellant, and the appellant presented the same evidence for both appeals.

The appellant presented his case through his testimony and the submission of valuation documents. Mr. DiBari presented a comparable-sales analysis consisting of three sales of purportedly comparable properties. These properties sold between January and September 2019 for prices ranging from \$615,000 to \$650,000. The appellant provided no data pertaining to any differences between the subject property and the purportedly comparable properties. Mr. DiBari also presented a comparable-assessment analysis consisting of five purportedly comparable properties. These properties were assessed from \$549,500 to \$663,800 for the fiscal year at issue. As with the comparable-sales analysis, the comparable-assessment analysis lacked data pertaining to any differences between the subject property and the purportedly comparable properties.

On cross-examination, Mr. DiBari was unable to explain why he chose comparable-sale properties that were located so far away from the subject property when there were sales of two-family dwellings in the subject property's same neighborhood. The appellee also questioned the comparison properties' comparability with the subject property, and further pointed out the lack of value adjustments for notable differences between those properties and the subject property in both the comparable-sale and comparable-assessment analyses. The appellee then rested on the validity of the assessment.

Based on the evidence presented, the Board found and ruled that the appellant presented insufficient evidence to support a finding that the subject property was overvalued for the fiscal year at issue. First and foremost, the appellant failed to demonstrate that his purportedly comparable properties were sufficiently similar to the subject property for meaningful comparison. The appellant also failed to provide data regarding differences between the subject property and his comparable properties or adjust the sale prices and assessed values of his comparable properties for differences between those properties and the subject property that affect fair cash value. The Board thus found and ruled that the appellant failed to provide credible evidence showing that the fair cash value for the subject property was less than its assessed value 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 will agree if both 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 at issue 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 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 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 fair cash value of property may be determined by recent sales of comparable properties in the market. See **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). Additionally, parties may advance evidence of assessed values of comparable properties to undermine the subject property's assessed value. See G.L. c. 58A, § 12B ("At any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible."). Here, the appellant presented both a comparable-sales and a comparable-assessment analysis.

However, properties used in a comparable-sales or comparable-assessment analysis must be "comparable" to the subject property, meaning that they must share "fundamental similarities" with the subject property, including similar age, location, size, and date of sale. **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004); see also **Heitin v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2002-323, 334. In the instant appeal, the appellant failed to establish that his comparison properties were comparable to the subject property, thus rendering his valuation conclusions unreliable. See **Antonino v. Assessors of Shutesbury**, Mass. ATB Findings of Fact and Reports 2008-54, 70.

Moreover, the appellant failed to provide data regarding differences between the subject property and his comparable properties or adjust the sale prices and assessed values of his comparable properties for differences between those properties and the subject property to yield a meaningful comparison for establishing fair cash value. "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. "[W]ithout appropriate adjustments," sale prices and assessed values of properties, even if shown to be reasonably similar to the subject property, "[do] not provide reliable indicator[s] of the subject's fair cash value." **Lupacchino v. Assessors of Southborough**, Mass. ATB Findings of Fact and Reports 2008-1253, 1269.

Because the appellant failed to demonstrate that his comparable-sale and comparable-assessment properties were sufficiently similar to the subject property, and further failed to consider the differences between the subject property and his comparable properties that affect fair cash value, the appellant's comparable-sale and comparable-assessment analyses were unpersuasive.

Based on the evidence presented, the Board found and ruled that the appellant did not meet his burden of proving that the assessed value of the subject property was greater than its fair cash 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/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board