

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JAMES J. FOSTER

v.

**BOARD OF ASSESSORS OF
THE CITY OF NEWTON**

Docket No. F342522

Promulgated:
February 7, 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 Newton ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to James J. Foster ("appellant") 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.

James J. Foster, pro se, for the appellant.

James Shaughnessy, Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2020, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a condominium unit with an address of 104 Washington Park ("subject condominium"). The subject condominium is a forty-year-old, three-story unit that contains 1,940 square feet of living area comprised of eight rooms, including three bedrooms, as well as two full bathrooms and one half bathroom.

For the fiscal year at issue, the assessors valued the subject condominium at \$962,600 and assessed a tax thereon, at the rate of \$10.76 per \$1,000, in the total amount of \$10,461.16, inclusive of the Community Preservation Act surcharge. The appellant timely paid the tax assessed without incurring interest. On January 22, 2021, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the appellee denied on February 24, 2021. On May 19, 2021, the appellant seasonably filed an appeal with the Board.¹ Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

¹While the petition was stamped as received by the Board on May 25, 2021, it was mailed in an envelope postmarked May 19, 2021. Pursuant to G.L. c. 58A, § 7, the Board considered the date of postmark to be the date of filing.

The appellant presented his case through his own testimony and a self-prepared valuation analysis. Referring to the Case-Shiller MA-Boston Home Price Index ("Case-Shiller Index"), the appellant argued that, since his purchase of the subject condominium in October 2003 until the valuation and assessment date for the fiscal year at issue, housing values in the Boston area had generally increased by 45.33%, but that the subject condominium's assessed value surpassed that general figure by 26%. The appellant thus concluded that the assessment exceeded the subject condominium's fair cash value.

The appellant next pointed out that the subject condominium subsequently sold in August 2021 for \$725,000, over \$200,000 less than its assessed value. The buyer was the tenant at the subject condominium at the time of the sale. On cross-examination, the appellant admitted that the subject condominium was not actively marketed, as the tenant was uncooperative and would not permit the unit to be shown in any manner. The appellant testified that he had no alternative but to sell to her.

Finally, the appellant pointed to neighboring 88 Washington Park. This comparison property was assessed at \$1,107,700 for the fiscal year at issue, about 15% higher than the assessed value of the subject condominium. Since 88 Washington Park sold for \$955,000 in April 2021, the appellant reasoned that this comparison property was also overvalued for the fiscal year at issue. With reference

again to the Case-Shiller Index, the appellant calculated his opinion of fair cash value for the comparison property and then subtracted 15% from that value to arrive at an opinion of value of \$705,870 for the subject condominium.

The appellee cross-examined the appellant but otherwise rested on the validity of the assessment.

Based on the evidence presented, the Board found that the appellant failed to meet his burden of proving a fair cash value for the subject condominium that was lower than its assessed value for the fiscal year at issue. The appellant attempted to prove overvaluation with reference to housing value statistics as reported by the Case-Shiller Index. For reasons explained further in the Opinion, the Board found that unadjusted, general market statistics are not probative evidence of fair cash value in appeals before the Board.

With respect to the subsequent sale of the subject condominium, the appellant admitted that the subject condominium was not adequately exposed to the market prior to the sale. The Board thus found that the sale was not an arm's-length transaction and therefore did not provide probative evidence of the subject condominium's fair cash value.

Finally, the appellant's evidence consisting of the sale of 88 Washington Park and reference again to general statistical data failed to account for key differences between this comparison

property and the subject condominium that affect fair cash value. Therefore, the Board found that this evidence was not informative of the subject condominium's fair cash value.

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

OPINION

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 (citing **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeal, the Board found that the appellant failed to provide sufficient, credible evidence to establish that the subject condominium was assessed for more than its fair cash value. The Board has consistently defined fair cash value with reference to specific sales of property. See, e.g., **Boston Gas Co.**, 334 Mass. at 566, and **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 394, *aff'd*, 73 Mass. App. Ct. 1107 (2008) [Rule 1:28 Decision] ("The fair cash value of property may often best be determined by recent sales of comparable properties in the market."). By relying on generalized market statistics, the appellant did not speak to the price that a willing buyer would pay to a willing seller for property that is comparable to the subject condominium. See **Cornetta v. Assessors of Topsfield**, Mass. ATB Findings of Fact and Reports 2010-543, 552 (finding that the appellant's "generalized statistical data . . . was not sufficiently probative of the fair cash value of the subject property" because it failed to provide "crucial factors for determining the comparability of individual properties to the

subject property, such as the specific neighborhood where a purportedly comparable property is located, its gross living area, number of bathrooms, and its condition"). The Board was thus not persuaded by the appellant's statistical evidence.

The appellant next offered the August 2021 sale of the subject condominium as evidence of its fair cash value. "We have observed in the past that '[a]ctual sales are . . . very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for a particular property.'" **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981). However, sales involving limited market exposure, particularly when involving a party close to the property, are not reliable evidence of fair cash value. See, e.g., **WB&T Mortgage Company, Inc. v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2006-379, 402, *aff'd*, 451 Mass. 716 (2008) ("In particular, a sale to an abutter may not represent fair cash value because the property may not have been exposed to the market for a sufficient period or the price may have been influenced by considerations unique to the purchaser.") (citing **Bainbridge Realty Trust v. Assessors of Chilmark**, Mass. ATB Findings of Fact and Report 2003-93, 101). In the instant appeal, the appellant admitted that the sale of the subject condominium to the then-tenant did not involve adequate exposure to the market. Indeed, the appellant acknowledged that the uncooperative tenant prevented offering the property on the

open market. The Board thus found and ruled that the August 2021 sale of the subject condominium was not an arm's-length sale that provided probative evidence of the subject condominium's fair cash value.

Finally, the appellant cited the April 2021 sale of neighboring 88 Washington Park. 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). Properties are "comparable" to the subject condominium when they share "fundamental similarities" with the subject condominium, including similar age, location, size, and date of sale. **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). "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. In the instant appeal, the appellant failed to show that 88 Washington Place was sufficiently comparable to the subject condominium and further failed to make any adjustments for key differences that affect value to yield a meaningful comparison for establishing fair cash value. See, e.g., **Famiglia, LLC v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2008-1368, 1385. The appellant's comparable-sale analysis was thus 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 condominium 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