

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**OARIE REALTY, LLC
SHAWN FREITAS, MANAGER**

**BOARD OF ASSESSORS OF
THE TOWN OF BILLERICA**

Docket No. F344543

Promulgated:
May 15, 2023

This is an appeal heard 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 Billerica ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Oarie Realty, LLC, Shawn Freitas, Manager ("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.

Shawn Freitas, pro se, for the appellant.

John B. Speidel, Assessor, for the appellee.

¹ The appellant originally filed under the informal procedure. Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings to the formal docket. See G.L. c. 58A, § 7A.

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 valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of two contiguous parcels of land located in the Town of Billerica: a 1.293-acre parcel improved with a 4,914-square-foot retail building that was originally built in 1918 but remodeled in 1992, located at 279 Boston Road ("building parcel"); and a 0.327-acre parking lot located adjacent to the building parcel at 2 Bridge Street ("parking lot").

The assessors valued the parking lot at \$266,000 and assessed a tax thereon, at the rate of \$29.89 per \$1,000, in the total amount of \$8,000.36, inclusive of a Community Preservation Act ("CPA") 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 April 13, 2021. On July 12, 2021,² the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and

²While the petition was stamped as received by the Board on July 22, 2021, it was mailed in an envelope postmarked July 12, 2021. Pursuant to G.L. c. 58A, § 7, the Board considered the date of postmark to be the date of filing.

ruled that it has jurisdiction to hear and decide the appeal of the parking lot's valuation.

The assessors valued the building parcel at \$694,400 and assessed a tax thereon, at the rate of \$29.89 per \$1,000, in the total amount of \$21,023.85, inclusive of a CPA 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 19, 2021. The appellant's petition to the Board filed on July 12, 2021 identified both the parking lot and the building parcel. However, the petition was filed more than three months from the denial of the building parcel's abatement application. Therefore, the Board found and ruled that it does not have jurisdiction over the appeal of the building parcel's valuation. Thus, the parking lot is the sole parcel at issue in the instant appeal ("subject property").³

The appellant testified on his own behalf as the manager of the subject property, and he also presented supporting documentation.

The subject property serves as a parking lot for the adjoining building parcel, which is improved with a structure that formerly housed a retail business operated by Mr. Freitas as well as another

³ The Board has discretion to allow more than one parcel of land to be included on the same petition. See 831 CMR 1.03(5).

retail business, most recently a used-car dealership. Mr. Freitas testified that the building parcel and the subject property have been vacant since the retail business closed in 2018 and the car dealership vacated in 2020.

Mr. Freitas testified that he had had conversations, both by telephone and by email, with the assessors' office to negotiate abatement for the subject property and the building parcel. Mr. Freitas testified that he was resuming negotiations that his father had initiated before he passed away in 2020. For the fiscal year at issue, the combined assessment of these properties was \$963,400. On March 24, 2021, the appellant and appellee reached an agreement for abatement of the subject property, reducing its value from \$266,000 to \$27,625, thereby reducing the combined value of the subject property and the building parcel from \$963,400 to \$725,025 for the fiscal year at issue.⁴

Shortly after the agreement, a member of the assessors saw a for-sale sign at the subject property and building parcel, with a total asking price of \$1,375,000. On March 30, 2021, the assessors notified the appellant that they were withdrawing their agreement, and on April 13, 2021, the appellee denied the abatement application for the subject property.

⁴ As previously mentioned, the appellee had earlier denied the abatement application for the building parcel on March 19, 2021.

The appellant primarily contended that the appellee wrongfully withdrew the agreement, claiming he had disclosed his plans to sell the subject property and building parcel during abatement discussions with the appellee. As a secondary argument, the appellant further claimed that the subject property was overvalued. In support of his contention, the appellant submitted evidence of the sale of 176 Boston Road in Billerica, consisting of a 0.65-acre parcel improved with a 4,098-square-foot, one-level structure built in 1974 and operating as a restaurant and bar. This purportedly comparable property sold for \$600,000 in July 2020; its assessed value was \$1,060,100 for the fiscal year at issue.

The appellee presented the requisite jurisdictional documents and a deed dated November 23, 2021 for the combined sale of the subject property and the building parcel for a total price of \$1,325,000.

Based on the evidence presented, the Board found and ruled that the appellant failed to meet his burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue. Focusing his argument on the appellee's revocation of the parties' agreement - which as will be explained in the Opinion below the Board has no authority to address - the appellant provided little evidence relating to the fair cash value of the subject property for the fiscal year at

issue. The appellant presented one purportedly comparable property, which may have been comparable to the subject property but only in combination with the building parcel, over which the Board did not have jurisdiction. The appellant provided no evidence relating to the value of the subject property on its own. The Board thus found that the appellant's evidence was not probative of the subject property's fair cash value for the fiscal year at issue.

The appellee, on the other hand, submitted evidence of the combined sale of the subject property and the building parcel, less than two years from the valuation and assessment date, for \$1,325,000, a value significantly greater than the combined assessment of \$963,400 for the fiscal year at issue. No evidence presented indicated that the real estate market had significantly changed in the time between the relevant valuation and assessment date and the subject property's sale date. The Board found that this combined sale substantially undermined the appellant's bare claim that the subject property had a fair cash value less than its assessed value for the fiscal year at issue.

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

"An administrative agency has no inherent or common law authority to do anything. An administrative board may act only to the extent that it has express or implied statutory authority to do so." ***Comm'r of Revenue v. Marr Scaffolding Co.***, 414 Mass. 489, 493 (1993). The function of the Board is to ensure that property is assessed at its fair cash value, with its authority granted by G.L. c. 59, §§ 64 and 65. The Board found no statutory grant of authority to enforce what amounted to a settlement agreement between the parties to this appeal. See ***Route 57 Solar, LLC and Agawam Solar, LLC v. Assessors of Agawam***, Mass. ATB Findings of Fact and Reports 2022-110, 117-18. Its review of the subject appeal was thus limited to whether the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue.

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). Properties are “comparable” to the subject property when they share “fundamental similarities” with the subject property, including similar age, location, size, and date of sale. See **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. v. Assessors of Boston**, 383 Mass. 456, 470 (1981).

The appellant offered no sales of properties that were sufficiently comparable to the subject property, a parking lot. The appellant's sole comparison property was 176 Boston Road, consisting of a building and a parking lot operating as a restaurant and bar, which the Board found could be compared to the subject property only in combination with the building parcel. Therefore, the appellant's comparable sale lacked probative value. See, e.g., **Famiglia, LLC v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2008-1368, 1385 (rejecting sales-comparison analysis when properties lacked fundamental similarities to the property at issue).

The appellee offered evidence of the subsequent sale of the subject property and the building parcel. "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.**, 383 Mass. at 469. The record in this appeal gave no indication of a significant change in the real estate market between the relevant assessment and valuation date and the parcels' sale date. The Board found that the combined sale for \$1,325,000, far greater than the combined assessment of \$963,400 for the two properties, substantially undermined the appellant's claim that the subject property had a fair cash value of less than its assessed value for the fiscal year at issue.

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, and further found that, on balance, the evidence of record supported the contested assessment.

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