COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PHILIP GINDI	**v.**	**BOARD OF ASSESSORS OF THE CITY OF MELROSE**
Docket Nos. F342180 & F342181		Promulgated: May 15, 2023

These are appeals 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 Melrose ("appellee" or "assessors") to abate taxes on real estate owned by and assessed to Philip Gindi ("Mr. Gindi" or "appellant") for fiscal year 2021 ("fiscal year at issue").

Chairman DeFrancisco heard the appeals. He was joined by Commissioners Good, Elliott, and Metzer in the decisions 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.

Philip Gindi, pro se, for the appellant.

Ellen Hutchinson, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2020, the appellant was the assessed owner of a 0.15-acre improved parcel of land located at 9 Larchmont Road ("residential parcel") as well as the adjacent 0.16-acre undevelopable parcel ("vacant parcel") in the City of Melrose (together, the "subject properties").

For the fiscal year at issue, the assessors valued the residential parcel at $688,100, and assessed a tax thereon, at the rate of $10.95 per $1,000, in the total amount of $7,534.70. The appellant timely paid the tax assessed without incurring interest. On January 27, 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 9, 2021. On April 9, 2021, 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 appeal pertaining to the residential parcel.

For the fiscal year at issue, the assessors valued the vacant parcel at $42,700, and assessed a tax thereon, at the rate of $10.95 per $1,000, in the total amount of $467.57. The appellant timely paid the tax assessed without incurring interest. On January

27, 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 9, 2021. On April 9, 2021, 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 appeal pertaining to the vacant parcel.

The residential parcel is improved with a single-family, Tudor-style dwelling that was constructed in 1920 and contains a total of 1,816 square feet of living area consisting of six rooms, including three bedrooms, as well as one full bathroom and one half bathroom ("subject home"). The subject home also includes a one-car garage attached to its porch.

The appellant testified on his own behalf and presented his case through the submission of valuation documents. For his case pertaining to the residential parcel, Mr. Gindi prepared a comparable-assessment analysis with data compiled from the Multiple Listing Service using four purportedly comparable properties in Melrose. With an almost exclusive focus on the land component of the residential parcel's assessment, Mr. Gindi compared the land value per acre between these properties and the residential parcel. After arriving at his opinion of value for the land component of the assessment, the appellant's overall opinion of value for the residential parcel was $523,230.82.

With respect to the vacant parcel, Mr. Gindi conceded that he could find no comparable properties for an analysis. He sought to testify about a conversation with an appraiser concerning the appraiser's opinion of the vacant parcel's value. However, as the appraiser was not a witness at the hearing, this testimony was hearsay, and thus not admissible as evidence. The appellant therefore simply testified that his opinion of value for the vacant parcel was $10,000 with no evidence to support this opinion.

Cross examination of the appellant revealed that he did not use the correct assessed values for his comparable-assessment analysis of the residential parcel, but instead used lower assessed values from earlier fiscal years.

The assessors presented their case through the testimony of Chief Assessor, Sarah MacLellan. Chief Assessor MacLellan criticized the appellant's comparable-assessment analysis used to challenge the residential parcel's assessed value. She testified that the subject properties were located close to Bellevue Golf Course, one of the most desirable neighborhoods in Melrose, and were assigned a neighborhood code of 5. Chief Assessor MacLellan explained that the appellant's four purportedly comparable properties were in neighborhoods assigned high codes, like 50 and 60, indicating the lowest-value neighborhoods in the city. She further testified that the purportedly comparable properties' residences were not Tudor-style residences like the subject home.

The assessors did not present a separate case for the vacant parcel, resting on the presumed validity of the assessment.

Based on the evidence presented, the Board found and ruled that the appellant failed to advance evidence sufficient to meet his burden of proof with respect to the subject properties. With respect to the residential parcel, the appellant's comparable-assessment properties were not from the subject properties' same desirable neighborhood, and they did not have Tudor-style homes. The Board thus found that these comparison properties were so patently different from the residential parcel that the analysis did not provide a reliable indicator of value. Additionally, the assessed values of his purportedly comparable properties were not from the fiscal year at issue, and they lacked adjustments for differences between those properties and the residential parcel that affect fair cash value.

Furthermore, the appellant's near-exclusive focus on the land values of the residential parcel and his purportedly comparable properties failed to establish why the assessed value, as a whole, exceeded the residential parcel's fair cash value. As will be explained more fully in the Opinion, the relevant question is not whether either a land or building value is excessive, but rather whether the overall assessment is excessive.

As for the vacant parcel, the appellant presented no evidence to support his opinion of its fair cash value.

Accordingly, the Board issued decisions for the appellee upholding the assessments in both appeals.

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 [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 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)).

As evidence of value for the residential parcel, the appellant presented a comparable-assessment analysis using four purportedly comparable properties. An analysis of comparable properties' assessments may form the basis for an abatement. *See* G.L. c. 58A, § 12B[1] and ***John Alden Sands v. Assessors of Bourne***, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-1107 ("The introduction of such evidence may provide adequate support for either the granting or denial of an abatement."). However, the appellant did not demonstrate that the purportedly comparable properties upon which his analysis relied were sufficiently comparable to the residential parcel. The appellant's comparable-assessment properties were not from the subject properties' same desirable neighborhood, and they were not improved with the residential parcel's Tudor-style home. *See, e.g.*, ***Hinds v. Assessors of Manchester-by-the-Sea***, Mass. ATB Findings of Fact and Reports 2006-771, 780 ("[T]he appellants' purportedly comparable properties were differently situated and so much larger than the appellants' property that their comparability was dubious.")(citing ***Narkiewich v. Assessors of Newbury***, Mass. ATB

[1] General Laws c. 58A, § 12B provides that: "At any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible."

Findings of Fact and Reports 2006-354, 360-61). The Board thus found that the appellant's comparison properties were so patently different from the residential parcel that his analysis did not provide a reliable indicator of value.

Additionally, the appellant chose lower assessed values from earlier fiscal years for his purportedly comparable properties. *See* ***Gallo v. Assessors of Everett***, Mass. ATB Findings of Fact and Reports 2013-343, 350 (finding that when he used assessment information from the wrong fiscal year, "the appellant's comparable-assessment methodology was without merit and any values derived from it would be unfounded"). The appellant further failed to adjust those values for differences between those properties and the residential parcel that affect fair cash value. "[R]eliance on unadjusted assessments of assertedly comparable properties . . . [is] insufficient to justify a value lower than that" assessed. ***Antonino & DiMare v. Assessors of Shutesbury***, Mass. ATB Findings of Fact and Reports 2008-54, 70.

In challenging the assessment of the residential parcel, the appellant also focused almost exclusively on the assessed value of the land. However, "a taxpayer does not conclusively establish a right to an abatement merely by showing that his land is overvalued. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'" ***Hinds***, Mass. ATB Findings of Fact and Reports

at 2006-778 (quoting ***Assessors of Brookline v. Prudential Insurance Co.,*** 310 Mass. 300, 317 (1941)). The Board has time and again ruled that an appellant cannot meet his burden of proving overvaluation simply by focusing on either the land or the building component of an assessment without consideration for whether the overall assessment reflects fair market value. *See, e.g.*, ***Opanasets v. Assessors of Plymouth***, Mass. ATB Findings of Fact and Reports 2010-532, 539 (ruling that "the appellant's evidence, which focused only on the land portion of the subject assessment, was insufficient to show that the overall assessment of the subject property exceeded its fair cash value"); *see also* ***Lang v. Assessors of Marblehead***, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding that "'taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but rather that the assessment including both components is excessive" (quoting ***Corrado v. Assessors of Sharon***, Mass. ATB Findings of Fact and Reports 2010-825, 832)).

As for the vacant parcel, the appellant's proposed testimony concerning the contents of a conversation with an appraiser, whom he did not present as a witness at the hearing, was hearsay and thus excluded from evidence. *See, e.g.*, ***Scharf & Schultz v. Assessors of Brookline***, Mass. ATB Findings of Fact and Reports 2015-232, 240 ("[N]either appraiser testified at the hearing nor was available for cross examination by the appellee or for

questioning by the Board. The Board therefore considered their opinions contained in the appraisal reports to be unsubstantiated hearsay."), *order denying motion to file late notice of appeal aff'd*, 90 Mass. App. Ct. 1120 (2016) (decision under Rule 1:28). The appellant presented no other evidence to support his opinion of value. The Board thus found and ruled that, with no evidence to support his opinion, the appellant failed to meet his burden of proving a value for the vacant parcel that was lower 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 values of the subject properties were greater than their fair cash values for the fiscal year at issue.

Accordingly, the Board issued decisions for the appellee in these appeals.

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