**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**STEIN B. JACOBSEN v.    BOARD OF ASSESSORS OF**

**THE TOWN OF CONCORD**

Docket No. F329935    Promulgated:

 September 28, 2018

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 Town of Concord (“assessors” or “appellee”) to abate a tax on real estate located in Concord, owned by and assessed to Stein B. Jacobsen (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

Commissioner Chmielinski heard this appeal.  Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him 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.

*Stein B. Jacobsen*, *pro se*, for the appellant.

*Frederick Ladd*, assistant assessor, for the appellee.

**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, 2015, the relevant valuation and assessment date, the appellant was the assessed owner of a parcel of real estate improved with a single-family home located at 531 Monument Street in Concord (“subject property”). For the fiscal year at issue, the assessors valued the subject property at $1,348,200, and assessed a tax thereon at the rate of $13.92 per thousand, in the total amount of $19,027.56.[[1]](#footnote-1) In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On February 1, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on February 25, 2016. On May 25, 2016,[[2]](#footnote-2) in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is a 2.42-acre parcel of real estate located on the corner of Monument Street and Red Coat Lane and is improved with a split-level, deck-style, contemporary house built in 1968. The parcel is square in shape and has substantial classified wetlands located to the rear of the parcel. The home has a finished living area of 2,385 square feet with seven rooms, including three bedrooms, as well as two full bathrooms and one half-bathroom. The lower level of the home has walkout access to the rear yard and is finished with a family room, office area, and a half-bathroom. The unfinished area of the lower level houses a two-car garage and a utility room that is also used for storage. Overall, the property is of average quality.

The subject property is located in the north-central section of Concord and is just one mile north of Concord center and one-half mile from the Minuteman National Park. Located across from the subject property is the Fenn School, an elite boys’ day school for grades four through nine. The subject property’s location is very desirable and is recognized as a premium area in Concord, given its large amount of open space and development-restricted land, together with its proximity to Concord center and other landmarks.

In support of his claim that the subject property was over assessed for the fiscal year at issue, the appellant relied on his testimony, the testimony of his wife, Joanna Vizgarda, and a self-prepared valuation report, which contained a detailed description of the subject property and used several methodologies to estimate the subject property’s fair market value for the fiscal year at issue.

In his valuation report, the appellant first performed a regression analysis relying on twelve sales of properties located on or just off of Monument Street that sold in 2014. Based on relevant information for each of these sales, including lot size, effective living area, sale price, and neighborhood classification, the appellant concluded that there is a “high degree of correlation” between house size and sale price, which becomes stronger when location is factored into the equation. Excluding the one land-only sale, the majority of these properties had significantly larger effective living areas than the subject property with an average area in excess of 5,500 square feet. Using this method, the appellant calculated a value for the subject property of $832,197.

Next, the appellant presented a comparable-sales analysis, relying on four properties located in Concord that he considered comparable to the subject property: 32 Martin Road; 123 Silver Hill Road; 183 Hubbard Street; and 155 Monument Street. These properties ranged in size from 0.33 acres to 1.00 acre with finished living areas that ranged from 2,402 square feet to 3,172 square feet. The properties sold between August 2014 and July 2016 with sale prices that ranged from $845,000 to $1,250,000. The appellant made adjustments to all of his purportedly comparable properties to account for the differences in finished living area. The only other adjustment made was to 155 Monument Street to account for the sale date, which was eighteen months after the relevant assessment date. After adjustments, the appellant derived adjusted sale prices ranging from $739,630 to $1,096,605 and then calculated an indicated fair market value for the subject property of $958,414. The appellant did not, however, make adjustments for differences in lot size, even though all of the purportedly comparable properties were significantly smaller than the subject property. The appellant also failed to make adjustments for location, despite the fact that two of his purportedly comparable properties were located in different neighborhoods than the subject property. Instead, the appellant testified that the locations of these purportedly comparable properties were “very similar, so no location adjustment is needed.”

 Lastly, the appellant determined a fair cash value for the fiscal year at issue using a “repeat sale data analysis” along with “the Case-Shiller method” to adjust for changes in the residential real estate market. According to the appellant, the Case-Shiller Home Price Indices measure the residential housing market in a given metropolitan area and track changes in the value of the residential real estate. For this analysis, the appellant relied on the purportedly comparable sale property located at 155 Monument Street. This property most recently sold on March 30, 2012 for $1,000,000. Relying on the Case-Shiller Indices, the appellant calculated an “interpolated” sale price of $1,062,500 to reflect its value as of the relevant assessment date for the fiscal year at issue. The appellant then compared the property’s interpolated sale price to its 2001 assessment, which represented a 79% appreciation in value. Lastly, the appellant applied the same 79% appreciation rate to the subject property’s 2001 assessment to estimate a fair cash value of $934,878 for the fiscal year at issue.

 Relying on the values derived from these three methods of valuation, the appellant estimated that the subject property’s fair cash value for the fiscal year at issue was $908,496.

 In defense of their assessment, the assessors relied on the testimony of Lane Partridge, the Chairman of the Board of Assessors, and a sales-comparison analysis. In their analysis, the assessors cited four sales of properties that they deemed comparable to the subject property. The sale dates for these properties ranged from December 4, 2013 to August 4, 2014, with sale prices ranging from $1,050,000 to $1,610,000. The properties ranged in size from 0.75 acres to 4.37 acres with finished living areas that varied from approximately 2,390 to 2,751 square feet. The assessors made adjustments to their purportedly comparable properties’ sale prices to account for differences with the subject property, including: excess land, living area, number of bathrooms, attached garage, condition, grade, style, and location. The assessors’ sale prices, after adjustments, ranged from $1,123,986 to $1,533,741. Based on their comparable-sales analysis, the assessors determined a fair cash value for the subject property of $1,350,000.

 Based on the evidence presented, the Board found that each of the appellant’s valuation methods contained substantial flaws that seriously undermined the accuracy of the values derived from them. First, with respect to the appellant’s comparable-sales analysis, the Board found that even though all of the appellant’s purportedly comparable properties had significantly smaller lot sizes, ranging from a mere 13% to at most 41% the size of the subject property, the appellant failed to make adjustments to account for these differences. The Board further found that the appellant failed to apply a locational adjustment despite the fact that two of the purportedly comparable properties were located in different neighborhoods. Therefore, the Board found that the appellant’s comparable-sales analysis was seriously flawed and, as a result, did not provide the Board with a reliable and accurate estimate of the subject property’s fair cash value for the fiscal year at issue.

Second, the Board found that the appellant’s regression analysis was flawed. For this approach, the appellant relied on twelve sales of residential properties located on or just off of Monument Street. Excluding the one land-only sale, the majority of these properties, with an average effective living area in excess of 5,500 square feet, had effective living areas far greater than the subject property. The Board found that the appellant’s regression analysis did not incorporate enough data about homes equivalent to or smaller in size than the subject property, and was, therefore, unreliable for the purpose to which the appellant applied it. In addition, the Board found that this technique is more appropriately used for mass appraisal purposes and for generating generalizations about property within an area, and not for an accurate estimate of the fair cash value for a specific property. “Regression modeling is often the logical choice for tax assessment when the alternative is to appraise each property individually and resource constraints prohibit doing so.” Appraisal Institute, The Appraisal of Real Estate 296 (14th ed. 2013). The Board therefore found that the appellant’s regression analysis was flawed and, as a result, did not provide the Board with a reliable and accurate enough estimate of the subject property’s fair cash value for the fiscal year at issue.

Lastly, the Board found that the appellant’s “repeat sale data analysis” was flawed. In this analysis, the appellant valued the subject property by applying the appreciation of a single purportedly comparable property between 2001 and 2016 to the subject property’s 2001 assessed value. The Board found, however, that the appellant failed to substantiate his fiscal year at issue interpolated sale price for 155 Monument Street and also establish how it related to the property’s 2001 assessment. The Board further found that by relying on a single property, the appellant failed to provide sufficient data to support his appreciation conclusion. “An adjustment derived from a single pair of sales is not necessarily indicative, just as a single sale does not necessarily reflect market value.” The Appraisal of Real Estate at 612. “When few [] pairings are available, the appraiser should use other analytical procedures or secondary data.” ***Id.*** The Board found that the appellant’s “repeat sale data analysis” was seriously flawed for the purpose to which the appellant applied it and did not provide the Board with a reliable and accurate estimate of the subject property’s fair cash value for the fiscal year at issue.

In contrast, the assessors provided a comparable-sales analysis of four properties, which included reasonable adjustments to compensate for differences with the subject property. The Board therefore found that the assessors’ analysis supported the contested assessment.

On the basis of the evidence presented, the Board found that the appellant failed to prove that the assessed value of the subject property exceeded its fair market 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 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 appellant has 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 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 this 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)).

In the present appeal, the appellant tried to demonstrate that the subject property was overvalued for the fiscal year at issue by offering the testimony of his spouse and also a self-prepared valuation report that contained descriptive information of the subject property, as well as comparable sales, “repeat sale data,” and regression analyses.

With respect to the appellant’s “repeat sale data analysis,” the Board found that this analysis was flawed. The Board found that the appellant failed to substantiate his fiscal year at issue interpolated sale price for his purportedly comparable property and also failed to establish how it related to the property’s 2001 assessment. The Board further found that by relying on a single property, the appellant failed to provide sufficient data to support his appreciation conclusion.

 With respect to the appellant’s regression analysis, the Board found that it too was flawed because, among other reasons, it did not incorporate enough data about homes equivalent in size to or smaller than the subject property. In addition, there was insufficient evidence to equate the value conclusions drawn by the appellant applying this method to the subject property. The Board also found that this technique is more appropriately used for mass appraisal purposes and for drawing generalizations about property within an area, but not for developing an accurate estimate of the fair cash value of a specific property. Accordingly, the Board found and ruled that the appellant’s regression analysis did not provide the Board with a reliable and accurate enough estimate of the subject property’s fair cash value for the fiscal year at issue.

With respect to the appellant’s comparable-sales analysis, the Board recognized that actual sales generally “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 may contain relevant data and information for determining the value of the property at issue. *See* ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929).

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. Without appropriate adjustments the values assigned to the purportedly comparable properties do not provide reliable indicators of the subject property’s fair cash value.  ***Lupacchino v. Assessors of Southborough,*** Mass. ATB Findings of Fact and Reports 2008-1253, 1269. In the present appeal, the Board found that the appellant failed to make adjustments to account for his comparable properties’ substantially smaller lot sizes and also for neighborhood differences. Therefore, the Board found that the appellant’s comparable-sales analysis was seriously flawed and, as a result, did not provide the Board with a reliable and accurate estimate of the subject property’s fair cash value for the fiscal year at issue.

Moreover, the Board found that the assessors’ comparable-sales analysis, which included adjustments for differences with the subject property, supported the subject property’s assessment for the fiscal year at issue.

 On this basis, the Board found and ruled that the subject property was not overvalued for the fiscal year at issue and therefore issued a decision for the appellee in this appeal.

 **THE** **APPELLATE TAX BOARD**

 **By: \_\_\_\_ \_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. This amount includes a Community Preservation Act surcharge in the amount of $260.62. [↑](#footnote-ref-1)
2. The appellant’s petition was mailed in an envelope postmarked May 25, 2016, which was received by the Board on May 27, 2016. Where, as here, the Board receives a petition after the three-month due date, the date of postmark is deemed to be the date of filing. *See* G.L. c. 58A, § 7; G.L. c. 59, §§ 64 and 65. Accordingly, the Board found and ruled that the filing date of the appellant's petition for the fiscal year at issue was deemed to be May 25, 2016, and the appeal was timely. [↑](#footnote-ref-2)