**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

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| --- | --- | --- |
| **MICHAEL J. KITTREDGE, et al.[[1]](#footnote-1)** | **v.** | **BOARD OF ASSESSORS OF** |
|  |  | **THE TOWN OF LEVERETT** |

Docket Nos. F325218-F325223

            F325227      Promulgated:

 F327632-F327638             January 31, 2019

 These are appeals under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the Assessors of the Town of Leverett (“assessors” or “appellee”) to abate taxes on certain real estate in the Town of Leverett assessed under G.L. c. 59, §§ 11 and 38 for fiscal years 2014 and 2015 (“fiscal years at issue”).

 Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa, Good, and Chmielinski joined him in the decisions for Michael J. Kittredge, et al. (“appellants”).

 These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Barry Auskern,* Esq. and *Richard Bowen*, Esq. for the appellants.

 *John J. Egan,* Esq. and *Lauren F. Olanoff*, Esq. for the appellee.

**FINDINGS OF FACT AND REPORT**

 At the hearing of these appeals, the appellants called one witness to testify: Ellen H. Anderson, whom the Appellate Tax Board (“Board”) qualified as an expert real estate valuation witness (“appellants’ appraiser”). The appellants also entered twelve exhibits into evidence, including an appraisal report prepared by the appellants’ appraiser for each of the fiscal years at issue; her supplemental appraisal report; and deeds of her purportedly comparable properties.

The assessors likewise called one witness to testify: James F. Fisher, whom the Board qualified as an expert real estate valuation witness (“assessors’ appraiser”). The assessors also entered exhibits into evidence, including the requisite jurisdictional documents and their appraiser’s appraisal report. Based on all the testimony and exhibits, its view of the subject property, and reasonable inferences drawn therefrom, the Board made the following findings of fact.

1. **Jurisdiction**

Leverett’s Collector of Taxes issued the actual tax bills for the fiscal years at issue on November 9, 2013 and December 22, 2015, respectively. In accordance with G.L. c. 59, § 57, the appellants timely paid the assessed taxes without incurring interest.

 The following table summarizes the additional relevant jurisdictional information for the fiscal years at issue.

|  |  |  |
| --- | --- | --- |
| **Event** | **Fiscal Year****2014** | **Fiscal Year****2015** |
| Abatement Applications Filed | 12/09/2013 | 01/16/2015 |
| Abatement Applications Deemed Denied | 03/09/2014 | 04/16/2015 |
| Notice of Inaction Mailed | 06/25/2014 | 04/21/2015 |
| Petitions Filed | 07/28/2014 | 06/23/2015 |

Regarding fiscal year 2014, the assessors failed to comply with G.L. c. 59, § 63 by not sending written notice of their inaction on the abatement applications to the appellants within ten days of the March 9, 2014 deemed denial date. Rather, on June 23, 2014, the assessors granted a partial abatement on one of the parcels, identified on assessors’ map 7, lot 138A (Docket No. F325227), and sent notice of it on June 25, 2014. The appellants filed their fiscal year 2014 appeals with the Board on July 28, 2014.

Because the assessors failed to comply with G.L. c. 59, § 63 the Board ruled that the appellants had an additional two months beyond the three-month period provided under G.L. c. 59, §§ 59, 64, and 65 to file their appeal with the Board. *See* ***Boston Communications Group, Inc. v. Assessors of Woburn***, Mass. ATB Findings of Fact and Reports2011-780, 788-89 (finding and ruling that when a notice of decision under § 63 is lacking, the Board will use a reasonableness standard in evaluating the appropriate time for appeal). *Cf.* ***Stagg Chevrolet, Inc. v. Board of Water Commission of Harwich***, 68 Mass. App. Ct. 120, 126 (2007) (affirming the Board’s allowance of an additional two months within which to file an appeal because the notice sent lacked critical information and the remedy of an additional two months crafted by the Board was reasonable and appropriate). Accordingly, the Board found that the appellants’ fiscal year 2014 appeals were timely.

Regarding the fiscal year 2015 appeals, the appellants timely filed their abatement applications and their appeals with the Board. Accordingly, on the basis of the above facts, the Board found and ruled that it had jurisdiction over the appeals for the both fiscal years at issue.

 At issue in these appeals is the valuation of an estate of approximately thirty-five acres that is comprised of seven contiguous parcels improved by four main structures totaling over 90,000 square feet, including: a residence with over 20,000 square feet; a spa/recreation center of more than 48,000 square feet; heated, finished collector car barns of more than 20,000 square feet; and a pool/clubhouse of almost 2,400 square (“subject property”). The following table provides the assessors’ map and lot numbers, the Board’s corresponding docket numbers, the assessed values, and summary descriptions of the parcels comprising the subject property.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Map/Lot** | **Docket Nos.****FY 2014 FY 2015** | **FY 2014 AV** | **FY 2015 AV** | **Description** |
|  7/127 | F325218 F327632 |  $ 259,000 |  $ 254,200 | 13.26 unimproved acres of a former golf course |
|  7/128 | F325219 F327633 |  $ 85,900 |  $ 81,300 |  0.97 acres of unimproved land |
|  7/129 | F325220 F327634 |  $ 667,800 |  $ 667,100 | 11.02 acres improved with the pool/clubhouse |
|  7/130 | F325221 F327635 |  $ 4,360,300 |  $ 4,352,100 |  1.84 acres improved with the main residence |
|  7/132 | F325222 F327636 |  $ 767,100 |  $ 745,300 |  2.05 acres improved with collector car barns |
|  7/138 | F325223 F327637 |  $ 68,700 |  $ 65,300 |  0.095 acres of unimproved land |
|  7/138A | F325227 F327638 |  $ 3,713,100\* |  $ 3,699,000 |  3.75 acres improved with the spa/recreation ctr |
| **Total** |  |  **$ 9,921,900** |  **$ 9,864,300** |  |

       \*as abated

 The following table provides the assessors’ map and lot numbers, the Board’s corresponding docket numbers, each parcel’s real estate tax assessed at $19.20 per thousand for fiscal year 2014 and $19.88 per thousand for fiscal year 2015, the Community Preservation Act (“CPA”) charge, and the total tax assessed.

|  |  |  |  |
| --- | --- | --- | --- |
| **Map/Lot** | **Docket Nos.****FY 2014 FY 2015** | **FY 2014 Total Tax** **RE Tax +**   **CPA = Total Tax** | **FY 2015 Total Tax** **RE Tax +**  **CPA = Total Tax** |
|   7/127 | F325218 F327632 | $ 4,972.80 + $ 91.58 = $ 5,064.38 | $ 5,053.50 + $ 91.96 = $ 5,145.46 |
|  7/128 | F325219 F327633 | $ 1,649.28 + $ 0.00 = $ 1,649.28 | $ 1,616.24 + $ 0.00 = $ 1,616.24 |
|  7/129 | F325220 F327634 | $12,821.76 + $ 327.05 = $13,148.81 | $13,261.95 + $ 338.22 = $13,600.17 |
|  7/130 | F325221 F327635 | $83,717.76 + $2,453.93 = $86,171.69 | $86,519.75 + $2,535.95 = $89,055.70 |
|  7/132 | F325222 F327636 | $14,728.32 + $ 384.25 = $15,112.57 | $14,816.56 + $ 384.86 = $15,201.42 |
|  7/138 | F325223 F327637 | $ 1,319.04 + $ 0.00 = $ 1,319.04 | $ 1,298.16 + $ 0.00 = $ 1,298.16 |
|  7/138A | F325227 F327638 | $71,291.52 + $2,081.15 = $73,372.67 | $73,536.12 + $2,146.44 = $75,682.56 |
| **Total** |  |  |  |

1. **Property Description**

The subject property is an estate property located in a residential zone and serviced by one large septic system. Mr. Kittredge created the estate by assembling seven parcels totaling approximately thirty-five acres. At the time of the assemblage, the subject property contained three single-family homes. Mr. Kittredge demolished one and replaced it with two collector car barns; converted another into the pool/clubhouse; and completely redesigned and expanded the third into his customized residence. Mr. Kittredge is a recreational enthusiast, an automobile and antique collector, and a philanthropist who hosts functions for local causes.

Neither the parties nor their appraisers focused on the relatively modest assessed values placed on the unimproved parcels – 7/127, 7/128, and 7/138; rather they concentrated their efforts on valuing the improved parcels – 7/129 (pool/clubhouse), 7/130 (main residence), 7/132 (collector car barns), and 7/138A (spa/recreation center).

The pool/clubhouse parcelcontains 11.02 acres and is improved with an outdoor pool, a pond, and three tennis courts, along witha 2,392-square-foot residence, a gazebo, and a cabana.

The main residence parcel is 1.84 acres andis improved with an outsized, 20,000-square-foot, three-story, Colonial-style home of above-average quality. The first floor contains five bedrooms, two full bathrooms, two half bathrooms, a great room, a dining room, a den, a sunroom, and a kitchen. The second floor contains the master bedroom suite, four additional bedrooms, four full bathrooms, a common room, a balcony off the common room, a loft, a screened porch, a music studio, an office, and a library. The third floor contains the game room. In addition, a large swath of the basement is finished space containing a home theater, two half bathrooms, a wine cellar, a lower dining room, a prep kitchen, a complete commercial-grade kitchen, and a living room. The unfinished basement space contains wine storage, other storage space, and mechanical equipment rooms. The residence also has an elevator, several patios, and a sophisticated security system.

The two collector car barns are sited on a 2.05-acre parcel. The first car barn, which, at the time of the Board’s view, housed an impressive and diverse array of collectible cars, was built in 2004 and has 11,360 square feet of gross building area on one floor. The structure has a wood frame with a painted barn board exterior. The showroom has suspended track lighting and a painted wallboard interior finish. There is a high quality finished bar area, a two-bay washing and cleaning area for the vehicles, a vestibule with stone-veneer siding, and a display area for approximately twenty vehicles. The second car barn, which, at the time of the Board’s view, was devoted to Porsche vehicles, was built in 2011 and is also a one-story, wood-framed structure with a painted barn board exterior and a similar interior finish to the first car barn. Its showroom has the capacity to display approximately twenty vehicles. Both structures have radiant heat and are centrally air conditioned.

The spa/recreation center, which is on a 3.75-acre parcel,has a gross building area of 48,315 square feet, including a 4,160-square-foot mezzanine. It is a steel-frame building with metal exterior siding on the back and sides and stone veneer on the front. It is heated and centrally air conditioned by HVAC systems that are located in a second building. The spa/recreation center houses a health spa, an indoor pool and waterfall, a three-lane bowling alley, a two-story game room, a half basketball court, a tennis court, a bar area, a performance stage, a kitchen, and fully anointed locker rooms with steam baths.

1. **The Appellants’ Case**

The appellants’ appraiser initially testified that the subject property’s highest and best use was as a residential compound. She qualified that conclusion, however, with the proviso that many of the amenities associated with the estate suffer from functional obsolescence and superadequacy and, therefore, contribute little to the estate’s value, in particular the pool/clubhouse and the spa/recreation center. She noted that pools are often considered to be detriments by potential buyers and opined that the spa/recreation center is essentially an outmoded and costly indoor swimming pool with fitness equipment, placed within an interior environment that is the equivalent of a tropical rain forest. She described the systems as being old, inefficient, and extremely expensive to operate. In her opinion, any potential buyer for the subject property would likely demolish the spa/recreation center, reduce its size, or completely change its use. However, she acknowledged that the collector car barns contributed value to the estate because potential buyers for this type of property were often collectors of cars and similar objects.

The appellants’ appraiser further noted that potential buyers for this type of property generally prefer to live in Eastern Massachusetts or own a second home on the ocean or in the Berkshire Hills. The subject property falls into neither of these categories. She opined that the Town of Leverett is not a vacation or working destination with appeal to wealthy Bostonians or New Yorkers; further, the subject property does not possess either of the two most sought after amenities by high-end buyers – views and water frontage. Accordingly, she concluded that the highest and best use for the subject property was as a “residential rural compound” within a secondary market where high-end sales ordinarily ranged between $500,000 and $700,000.

 The appellants’ appraiser considered the three approaches to value. She rejected the income approach because the subject property was not income-producing, and the cost approach because of the subject property’s age, functional obsolescence, and superadequacy. Using a sales approach, she investigated many sales and ultimately, in her supplemental report and testimony, relied on five that she believed were reasonably comparable to the subject property. The following table summarizes these sales.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Comp.** | **Address** | **Town** | **Acreage** | **Sale Date** | **Sale Price** |
| 1 | 332 Mendon St.  | Upton |  61.64 | 09/16/2013 | $ 1,900,000 |
| 2 | 91 Round Hill | Hampshire |  0.35 | 07/05/2013 | $ 1,700,000 |
| 3 | 808 Circuit St. | Hanover |  20.00 | 05/29/2013 | $ 1,650,000 |
| 4 | 32 Stillington Dr. | Gloucester |  24.00 | 10/17/2013 | $ 2,670,000 |
| 5 | 5 Willow | Weston |  13.50 | 10/01/2013 | $10,000,000 |

In her reports and testimony, the appellants’ appraiser presented a description of her comparable-sale properties, the conditions surrounding the sales, and her quantitative adjustments for location, lot size, and the presence of barns and garages or pools. She also considered qualitative adjustments for views, water frontage, and quality of construction in determining which of her comparable-sale properties were inferior or superior to the subject property. A summary of her adjusted values for each of her purportedly comparable properties is contained in the following table.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Comp.** | **Address** | **Town** | **Sale Price** | **Adjusted Value** |
| 1 | 332 Mendon St.  | Upton | $ 1,900,000 | $ 1,694,540 |
| 2 | 91 Round Hill | Hampshire | $ 1,700,000 | $ 1,916,000 |
| 3 | 808 Circuit St. | Hanover | $ 1,650,000 | $ 1,261,050 |
| 4 | 32 Stillington Dr. | Gloucester | $ 2,670,000 | $ 1,810,170 |
| 5 | 5 Willow | Weston | $10,000,000 | $ 2,203,000 |

The appellants’ appraiser concluded that her comparable-sale properties 1 and 4 were most comparable to the subject property. Apparently relying primarily on her comparable sale 4, she estimated the value of the subject property at $1,800,000 for the fiscal years at issue.

1. **The Assessors’ Case**

The assessors’ appraiser concluded that the subject property’s highest and best use was as an estate that could be reconfigured upon sale. He believed that the locations of the various buildings and structures on the subject property, as well as its size and layout, permitted flexible future uses that could encompass development without negatively impacting the existing residence. For example, the subject property could be purchased by a buyer without any interest in the spa/recreation center because the location of that parcel – a significant distance from the residence - would still allow for the complete enjoyment of the residence and a sale of the spa/recreation center parcel for a different use.

To value the subject property, he employed both cost and sales approaches.[[2]](#footnote-2) In his sales approach, the assessors’ appraiser valued each component of the subject property separately, and then discounted those separate values before adding them together.

Relying on nine properties ranging in price from $1,055,000 to $2,725,000, which he adjusted for factors such as sale date, location, site/view, acreage, design/appeal, age/condition/quality, room count/gross living area, bathrooms, and functional utility, he determined a range of values for the main residence alone of $3,100,000 to $3,200,000 for fiscal year 2014 and $3,100,000 to $3,300,000 for fiscal year 2015. The following table summarizes the sales that he selected.

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Comp.** | **Address** | **Town** | **Acreage** | **Sale Date** | **Sale Price** |
| 1 | 17 Falcon Heights Rd. | Wilberham | 4.46 | 07/30/2013 | $ 1,250,000 |
| 2 | 77 Ely Rd. | Farmington, CT | 5.16 | 03/15/2012 | $ 2,256,000 |
| 3 | 16 Meadow Rd. | Northampton | 8.05 | 06/15/2011 | $ 1,150,000 |
| 4 | 140 Ashford Row | Longmeadow | 2.36 | 07/10/2012 | $ 1,200,000 |
| 5 | 38 Sears Rd. | Southborough |  14.51 | 11/05/2010 | $ 2,500,000 |
| 6 | 221 Old Littleton Rd. | Harvard | 6.68 | 11/16/2011 | $ 2,025,000 |
| 7 | 19 Ice Glen Rd. | Stockbridge |   11.44 | 10/16/2013 | $ 2,725,000 |
| 8 | 91 Round Hill Rd. | Northampton | 0.35 | 07/05/2013 | $ 1,700,000 |
| 9 | 324 Audubon Rd. | Northampton |   10.34 | 04/29/2014 | $ 1,055,000 |

 He next relied on five sales of commercial properties, ranging in price from $330,000 to $1,320,000, to which he applied several adjustments in reaching a range of values for the collector car barns alone of $950,000 to $1,000,000 for each of the fiscal years at issue. The sale properties upon which he relied are summarized in the following table.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Comp.** | **Address** | **Town** | **GBA** | **Acreage** | **Sale Date** | **Sale** **Price** |
| 1 | 571 Southampton Rd. | Westfield |  8,500  | 0.58 | 10/2013 | $ 475,000 |
| 2 | 785 New Ludlow Rd. | S. Hadley |  7,400 | 1.97 | 02/2011 | $ 440,000 |
| 3 | 687 Silver St. | Agawam |  2,600 | 2.76 | 01/2009 | $ 455,000 |
| 4 | 2 Derby Rd. | Spencer |  8,340 | 1.45 | 07/2010 | $ 330,000 |
| 5 | 28 Tyburski Rd. | Ludlow | 21,500 | 4.65 | 09/2010 | $ 1,320,000 |

 The assessors’ appraiser selected six residential-sale properties, ranging in price from $340,000 to $564,000, to which he applied various adjustments in estimating a range of values for the pool/clubhouse alone of $675,000 to $725,000 for each fiscal year at issue. His comparable-sale properties are summarized in the following table.

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Comp.** | **Street** | **Town** | **Acreage** | **Square****Footage** | **Sale Date** | **Sale Price** |
| 1 | 39 Laurel Dr. | Leverett | 2.08 | 2,439 | 08/30/2012 | $ 525,000 |
| 2 | 330 Long Plain Rd. | Leverett | 6.88 | 3,341 | 03/01/2011 | $ 499,999 |
| 3 | 16 Long Hill Rd. | Leverett | 3.36 | 3,387 | 08/13/2013 | $ 564,000 |
| 4 | 91 Long Hill Rd. | Leverett | 4.77 | 1,725 | 07/25/2013 | $ 360,000 |
| 5 | 6 Sill Corner Rd. | Leverett | 3.03 | 1,704 | 07/15/2013 | $ 340,000 |
| 6 | 3 Sill Corner Rd. | Leverett | 5.07 | 3,221 | 09/21/2012 | $ 458,000 |

 The assessors’ appraiser performed two comparable-sales analyses to value the spa/recreation center. In the first, he compared the spa/recreation center to six commercial properties that had sold from 2010 to 2013. His commercial-sale properties consisted of: fitness centers; a recreation center with miniature golf, batting cages, bumper boats, and an arcade; a hockey rink with a bar and restaurant; and a rock-climbing center. Their sale prices ranged from $725,000 to $2,200,000. After applying his adjustments, he valued the spa/recreation center as a commercial property at $4,590,000 to $4,830,000 for each of the fiscal years at issue. The table below reflects a summary of the relevant data on which he relied.

**Commercial-Sale Properties**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Comp.** | **Street** | **Town** | **Use** | **Acre-age** | **Square****Footage** | **Sale Date** | **Sale Price** |
| 1 | 20 Sebethe Drive | Cromwell, CT | fitness center | 2.26 | 11,208 | 11/2011 | $ 725,000 |
| 2 | 259 Eastern Blvd. | Glastonbury, CT | rock climbing gym  | 2.54 | 25,320 | 12/2012 | $ 2,200,000 |
| 3 | 5 Courthouse Lane | Chelmsford  | hockey rink | 1.87 | 27,100 | 10/2012 | $ 1,240,000 |
| 4 | 49A Tolland Turnpike | Manchester, CT | recreation center | 3.89 | 40,106 | 03/2013 | $ 1,980,740 |
| 5 | 271 Oakwood Drive | Glastonbury, CT | fitness center | 2.06 | 15,340 | 01/2012 | $ 825,000 |
| 6 | 40 Turkey Hill Road | Belchertown  | Planet Fitness | 5.0 | 15,000 | 12/2010 | $ 1,025,000 |

In his second comparable-sales analysis to value spa/recreation center, the assessors’ appraiser relied on the adjusted values that he determined from eight residential-zoned educational facilities. The sale prices associated with his residential-zoned properties ranged from $507,000 to $2,200,000. After applying his adjustments, he valued the spa/recreation center at $4,350,000 to $4,590,000 for each of the fiscal years at issue. His analysis based on residential-zoned properties is summarized in the following table.

**Residential-Zoned Properties**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Comp.** | **Street** | **Town** | **Use** | **Acre-age** | **Square****Footage** | **Sale Date** | **Sale Price** |
| 1 | 66 School Street | Granby | MacDuffie School | 28.35 | 110,000 | 06/2010 | $ 2,700,000 |
| 2 | 33 Breckwood Blvd. | Springfield | OLSH |  1.69 |  62,115 | 06/2009 | $ 3,365,958 |
| 3 | Armory/Carew St. | Springfield | OLOH |  2.62 |  65,942 | 06/2009 | $ 4,045,333 |
| 4 | 36 Margaret Street | Springfield | Mount Carmel |  0.94 |  41,250 | 03/2014 | $ 2,600,000 |
| 5 | 1760 Mapleton Ave. | Suffield, CT | Culinary Institute | 56.10 | 131,797 | 02/2010 | $ 7,000,000 |
| 6 | 40 Brick Kiln Road | Chelmsford | Merrimac Educational |  4.80 |  21,585 | 07/2008 | $ 2,485,000 |
| 7 | 67 Lincoln Street | Worcester | Nativity School |  0.63 |  19,172 | 10/2008 | $ 1,800,000 |
| 8 | 370 Pine Street | Springfield | Veritas School |  1.42 |  49,500 | 12/2011 | $ 2,937,000 |

To estimate the value of the subject property as a whole, the assessors’ appraiser first discounted, with little to no substantiation, the various values that he achieved for the collector car barns, pool/clubhouse, and spa/recreation center by percentages ranging from 15% to 35% on the theory that a buyer would insist on those discounts. He then added the values that he derived for each of the components of the subject property to estimate the value of the subject property at $7,750,000 for fiscal year 2014 and $7,850,000 for fiscal year 2015. His reconciliation of the subject property’s values after including those derived from his cost approach were slightly higher at $8,000,000 for fiscal year 2014 and $8,100,000 for fiscal year 2015.

1. **The Board’s Ultimate Findings**

 The valuation of the subject property presented the Board with three major adjustment challenges - location, size, and superadequacy. As the appellants’ appraiser observed, Leverett is at best a secondary location for an estate property such as this one. Both appraisers had to venture far from Leverett to find what they considered to be comparable properties, but even the vast majority of these properties were considerably smaller than the subject property in both acreage and residence square footage. Additionally, the residence and its amenities, coupled with the pool/clubhouse, collector car barns, and spa/recreation center, contain many features that were customized for this owner and likely have limited appeal to potential buyers of an estate such as this one.

 The Board agreed with the determination of both appraisers that the subject property’s highest and best use was as a residential compound or estate, but disagreed with many of their provisos and analyses. The appellants’ appraiser placed nominal values on virtually all of the subject property’s amenities, particularly the pool/clubhouse and the spa/recreation center, leading to an overall value for the estate of $1,800,000. The assessors’ appraiser valued each component of the estate separately, essentially speculating that each parcel had a real estate market, even a commercial real estate market in several cases, of its own and then, after some unsupported discounting, added the values together for a value in the $8,000,000 range. The Board found that neither of these approaches valued the subject property as a residential compound or an estate with estate-type amenities.

To more properly estimate the value of the subject property as an estate, the Board determined a comprehensive per-square-foot value for the main residence, which encompassed the value of the residence and its complementary amenities, including the collector car barns, pool/clubhouse, and spa/recreation center. This per-square-foot value reflected the extent to which the amenities enhanced the value of the main residence while also accounting for the subject property’s location, size, and superadequacy.

 While the record is replete with comparable-sale properties, the Board found that the overwhelming majority of them are simply not comparable to the subject property. For example, none of the properties presented by the assessors’ appraiser is comparable because they at best reflect only a piece of the estate or a component’s value - assuming the Board agreed with that highest and best use, which it did not - as opposed to the subject property’s overall value as an estate. Moreover, he considered portions of the subject property to be commercially attractive, which the Board did not, and used what he considered to be commercial comparable-sale properties.

Of the comparable-sale properties ultimately relied upon by the appellants’ appraiser, the Board found two of them to be comparable enough to the subject property to provide probative evidence of value. The first of these properties is 32 Stillington Drive in Gloucester, which sold on October 17, 2013 for $2,670,000. This Tudor-style property, which sits behind a locked gate, was originally built in 1926 and underwent extensive renovations in the late 1990s and early 2000s. It is set on twenty-four acres surrounded by conservation land and has spectacular ocean views and a main residence containing 10,000 square feet of living space that includes two kitchens, a stage, a ballroom, imported flooring, eight bedrooms, eight bathrooms, and two half bathrooms. There is also a two-bedroom guest cottage, a pond, and an attached four-car garage. The appellants’ appraiser considered this property to be superior to the subject property in location and view, while clearly lacking the breadth of the subject property’s amenities. It is also one of the two properties that she considered most comparable to the subject property. This property’s per-square-foot value, based on the main residence’s square footage, is $267.

 The second comparable property that the Board found probative was 15 Hamlin’s Crossing in Dover, which the appellants’ appraiser included in her appraisal report for fiscal year 2015. This property is set on twenty-four acres. It sold on April 15, 2014 for $5,723,000. The 7,424-square-foot main residence contains eighteen rooms, including five bedrooms, six full bathrooms, and one half bathroom, as well as seven fireplaces. The property is also improved with a 1,097-square-foot caretaker apartment, a 1,160-square-foot recreation lodge, and a 1,190-square-foot guesthouse, along with tennis courts, a large swimming pool, and numerous facilities for cars. In addition, there is a pond located on the property and a barn with a stable, as well as a paddock, a greenhouse, a gazebo, and a cabana. The appellants’ appraiser considered this property superior to the subject property in quality and location but similar in amenities. This property’s per-square-foot value, based on the main residence’s square footage, is $770.

 In sum, the Board found that while the Gloucester property has a superior location and view compared to the subject property, it is inferior in amenities. The Dover property is also superior in location and quality, but closer to the subject property in amenities. While the Board found that the subject property’s amenities are largely customized and personal to Mr. Kittredge, it concluded that they nonetheless have value to high-end buyers, particularly the pool/clubhouse and the collector car barns, and, therefore, add value to the subject property. Moreover, the Board found that the spa/recreation center could be updated and adapted to less costly alternative uses. In weighing the range of these comparable properties’ per-square-foot values - $267 to $770 – the Board found that the subject property’s fair market value fell between them but was considerably closer to the Gloucester property, particularly considering the maxim that as size increases, per-square-foot value tends to decrease. Accordingly, the Board assigned a $325-per-square-foot value to the subject property for each of the fiscal years at issue, finding that this value appropriately reflected the subject property’s size, location, quality, and amenities while still accounting for its superadequacy. Applying this per-square-foot value to the main residence’s square footage resulted in a fair cash value for the subject property of $6,500,000 for both fiscal years at issue.

 The following two tables apportion the subject property’s fair cash value to each of the seven parcels that comprise the subject property using the percentage that each parcel contributed to the subject property’s overall assessed value for each fiscal year at issue.

**Fiscal Year 2014**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Map/Lot** | **Docket No.** | **Description** | **AV** | **% of Total AV** | **Fair Cash Value** | **Value Abated** |
| 7/127 | F325218 | open space/golf | $  259,000 |  2.6% | $ 169,000 | $ 90,000 |
| 7/128 | F325219 | open space/golf | $  85,900 |  0.9% | $ 58,500 | $ 27,400 |
| 7/129 | F325220 | pool/clubhouse | $   667,800 |  6.7% | $ 435,500 | $ 232,300 |
| 7/130 | F325221 | main residence | $ 4,360,300 |  44.0% | $ 2,860,000 | $ 1,500,300 |
| 7/132 | F325222 | collector car barns | $ 767,100 |  7.7% | $ 500,500 | $ 266,600 |
| 7/138 | F325223 | open space | $ 68,700 |  0.7% | $ 45,500 | $ 23,200 |
|  7/138A | F325227 | spa/recreation center | $ 3,713,100 |  37.4% | $ 2,431,000 | $ 1,282,100 |
|  | **Total** |  | **$ 9,921,900** | 100.0% | **$ 6,500,000** | **$ 3,421,900** |

**Fiscal Year 2015**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
| **Map/Lot** | **Docket No.** | **Description** | **AV** | **% of Total AV**  | **Fair Cash Value**  | **Value Abated** |
| 7/127 | F327632 | open space/golf | $  254,200 |  2.6% | $ 169,000 | $ 85,200 |
| 7/128 | F327633 | open space/golf | $   81,300 |  0.8% | $ 52,000 | $ 29,300 |
| 7/129 | F327634 | pool/club house | $ 667,100 |  6.8% | $ 442,000 | $ 225,100 |
| 7/130 | F327635 | main residence | $ 4,352,100 |  44.0% | $ 2,860,000 | $ 1,492,100 |
| 7/132 | F327636 | collector car barns | $ 745,300 |  7.6% | $ 494,000 | $ 251,300 |
| 7/138 | F327637 | open space | $ 65,300 |  0.7% | $ 45,500 | $ 19,800 |
|  7/138A | F327638 | spa/recreation center | $ 3,699,000 |  37.5% | $ 2,437,500 | $ 1,261,500 |
|  | **Total** |  | **$ 9,864,300** | 100.0% | **$ 6,500,000** | **$ 3,364,300** |

The following two tables summarize the real estate tax abatements, the CPA abatements, and the total abatements for each parcel for each of the fiscal years at issue.

**Fiscal Year 2014**

**@$19.20/$1,000**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Map/Lot** | **Docket No.** | **Assessed Value** | **Fair Cash Value**  | **Value Abated** | **RE Tax****Abatement** | **CPA****Abatement** | **Total Abatement** |
| 7/127 | F325218 | $ 259,000 | $ 169,000 | $ 90,000 | $ 1,728.00 | $ 51.84 | $ 1,779.84 |
| 7/128 | F325219 | $ 85,900 | $ 58,500 | $ 27,400 | $ 526.08 | $ 0 | $ 526.08 |
| 7/129 | F325220 | $ 667,800 | $ 435,500 | $ 232,300 | $ 4,460.16 | $ 133.80 | $ 4,593.96 |
| 7/130 | F325221 | $ 4,360,300 | $ 2,860,000 | $ 1,500,300 | $28,805.76 | $ 864.17 | $29,669.93 |
| 7/132 | F325222 | $ 767,100 | $ 500,500 | $ 266,600 | $ 5,118.72 | $ 153.56 | $ 5,272.28 |
| 7/138 | F325223 | $ 68,700 | $ 45,500 | $ 23,200 | $ 445.44 | $ 0 | $ 445.44 |
|  7/138A | F325227 | $ 3,713,100 | $ 2,431,000 | $ 1,282,100 | $24,616.32 | $ 738.49 | $25,354.81 |
|  | **Total** | **$ 9,921,900** | **$ 6,500,000** | **$ 3,421,900** | **$65,700.48** | **$1,941.86** | **$67,642.34** |

**Fiscal Year 2015**

**@$19.88/$1,000**

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **Map/Lot** | **Docket No.** | **Assessed Value** | **Fair Cash Value** | **Value Abated** | **RE Tax****Abatement** | **CPA****Abatement** | **Total Abatement** |
| 7/127 | F327632 | $ 254,200 | $ 169,000 | $ 85,200 | $ 1,693.78 | $ 50.81 | $ 1,744.59 |
| 7/128 | F327633 | $ 81,300 | $ 52,000 | $ 29,300 | $ 582.48 | $ 0 | $ 582.48 |
| 7/129 | F327634 | $ 667,100 | $ 442,000 | $ 225,100 | $ 4,474.99 | $ 134.25 | $ 4,609.24 |
| 7/130 | F327635 | $ 4,352,100 | $ 2,860,000 | $ 1,492,100 | $29,662.95 | $ 889.89 | $30,552.84 |
| 7/132 | F327636 | $ 745,300 | $ 494,000 | $ 251,300 | $ 4,995.84 | $ 149.88 | $ 5,145.72 |
| 7/138 | F327637 | $ 65,300 | $ 45,500 | $ 19,800 | $ 393.62 | $ 0 | $ 393.62 |
|  7/138A | F327638 | $ 3,699,000 | $ 2,437,500 | $ 1,261,500 | $25,078.62 | $ 752.36 | $25,830.98 |
|  | **Total** | **$ 9,864,300** | **$ 6,500,000** | **$ 3,364,300** | **$66,882.28** | **$1,977.19** | **$68,859.47** |

On this basis, the Board decided these appeals for the appellants and granted tax abatements in the amount of $67,642.34 for fiscal year 2014 and $68,859.47 for fiscal year 2015, which included an appropriate reduction in the CPA assessment.

**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 at 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). Accordingly, “fair cash value” means “fair market value.” ***Id.***

 The appellants have the burden of proving that the property has a lower value than that assessed. *See* ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)) (“‘The burden of proof is upon the petitioner[s] to make out [their] right as [a] matter of law to abatement of the tax.’”). Accordingly “the board is entitled to ‘presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] 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 appeals, the appellants presented affirmative evidence of value to demonstrate that the assessors had overvalued the subject property.

The ascertainment of a property’s highest and best use is a prerequisite to valuation analysis. *See* ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 429 (2004); ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989). The idea is to ascertain the maximum value of the property for any legitimate and reasonable use. *See* ***Irving Saunders Trust***,26 Mass. App. Ct. at 843. If the property is particularly well suited for a certain use that is not prohibited, then that use may be reflected in an estimate of fair market value. *See* ***Colonial Acres, Inc. v. North Reading***, 3 Mass. App. Ct. 384, 386 (1975). Consideration should be given to the purpose for which the property is adapted. *See* ***Leen v. Assessors of Boston***, 345 Mass. 494, 504 (1963); ***Boston Gas*** ***Co.***, 334 Mass. at 566. Property cannot be valued on the basis of hypothetical or future uses that are remote or speculative. *See* ***Skyline Homes, Inc. v. Commonwealth***, 362 Mass. 684, 687 (1972); ***Tigar v. Mystic River Bridge Authority***, 329 Mass. 514, 518 (1952)***; Salem Country Club, Inc. v. Peabody Redevelopment Authority***, 21 Mass. App. Ct. 433, 435 (1986). “[When] a market value opinion is developed for improved property, analysis of the highest and best use as improved is essential.” Appraisal Institute, The Appraisal of Real Estate 139 (13th ed. 2008).

In the instant appeals, the appellants’ appraiser considered the highest and best use of the subject property to be a “residential rural compound,” while the assessors’ appraiser called it an estate that could be reconfigured upon sale. The Board found that the opinion of the assessors’ appraiser regarding reconfiguration, particularly with respect to the commercial reconfiguration of the subject property, was speculative and against the weight of the evidence. Accordingly, the Board found and ruled that the highest and best use of the subject property was its continued use as a residential compound or estate with estate-type amenities.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost. ***Correia v. New Bedford Redevelopment Authority***, 375 Mass. 360, 362 (1978). In these appeals, the appellants’ appraiser used a sales-comparison approach. The assessors’ appraiser used both sales-comparison and cost methodologies. The Board, however, did not consider his cost approach because the age, condition, and superadequacy of the subject property mitigated against using cost approaches to value it. The Board adopted a sales-comparison methodology because the most reliable evidence supported it.

The fair cash value of property may be determined by recent sales of comparable properties. *See* ***Correia,*** 375 Mass. at 362. “[S]ales of property usually 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, 691 (1982). “[C]omparability depends on fundamental similarities . . . . That is, basic comparability is established considering the general character of the properties. 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 comparability of property thus is determined according to characteristics of location, size, use, topography, and improvements. ***Lyman v. Boston***, 164 Mass. 99, 104-05 (1895). However, if a property is unusual, it may be necessary to extend the search for comparable properties beyond the geographic area. *See, e.g.,* ***New Boston Garden Corp.***, 383 Mass. at 470.

 In these appeals, both appraisers extended their searches for comparable properties throughout the Commonwealth. The Board agreed that such a search was appropriate given the unique nature of the subject property. The properties that the Board found most comparable were ones submitted into evidence by the appellants’ appraiser. The ones submitted by the assessors’ appraiser did not comport with the Board’s finding of highest and best use because he selected comparable-sale properties for components or individual parcels that make up the subject property as opposed to the subject property as a whole. The Board then determined the comparable properties’ sale prices in per-square-foot units of comparison and applied qualitative adjustments in reaching a price-per-square-foot value for the subject property. *See* The Appraisal of Real Estate at 305-14 (13th ed. 2008).

The Board is not required to adopt any particular method of valuation, ***Pepsi-Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986), and can accept those portions of the evidence that appear to have the more convincing weight. ***Foxboro Associates***, 385 Mass. at 683. As part of that evidence, the Board may take its view of the subject property into account. ***Inhabitants of Westport v. County Commissioners***, 246 Mass. 556, 563 (1923). “The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board.” ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977). The Board may select among various elements of value as shown by the record and form an independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605. “The market value of the property c[an] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment.” ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 72 (1941) (citations omitted). *See also* ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984); ***New Boston Garden Corp.***, 383 Mass. at 473; ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971).

Based on the evidence presented in these appeals and the Board’s subsidiary findings and rulings, the Board ultimately found and ruled that the subject property was overvalued and that its fair cash value for both fiscal years at issue was $6,500,000.

Accordingly, the Board decided these appeals for the appellants and granted tax abatements in the amount of $67,642.34 for fiscal year 2014 and $68,859.47 for fiscal year 2015, which include an appropriate reduction in the CPA assessment.

**THE APPELLATE TAX BOARD**

###                         By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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

**A true copy,**

#### Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

#  Clerk of the Board

1. The other appellants are: the Meadow Nominee Trust, Kenneth A. Bergeron, Trustee, and the Pocomo Road Nominee Trust, Barre Tozloski and David L. Beatty, Trustees. [↑](#footnote-ref-1)
2. The Board rejected the use of a cost approach to value the subject property because, as discussed below, nature of the improvements – which are largely a reflection of Mr. Kitteridge’s individual tastes and desires – as well as their age and condition rendered a cost approach ineffective for measuring market value. [↑](#footnote-ref-2)