

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MICHAEL KONNIKOV

v.

BOARD OF ASSESSORS OF
THE TOWN OF WESTWOOD

Docket No. F336589

Promulgated:
May 20, 2020

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 and G.L. c. 58A, § 7, from the refusal of the Board of Assessors of the Town of Westwood ("appellee" or "assessors") to abate a tax on real estate located in the Town of Westwood, owned by and assessed to Michael Konnikov ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 ("fiscal year at issue").

Commissioner Elliott heard this appeal. He was joined in the decision for the appellant by Chairman Hammond and Commissioners Rose, Good, and Metzger.

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.

Michael Konnikov, pro se, for the appellant.

John Curran, 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, 2017, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of a 5.3-acre parcel of land improved with a dwelling located at 15 Pettees Pond Lane in Westwood ("subject property").¹ For the fiscal year at issue, the assessors valued the subject property at \$1,730,600, and assessed a tax thereon, at the rate of \$15.09 per thousand, in the total amount of \$26,114.75.

On January 25, 2018, the appellant timely filed an Application for Abatement with the assessors. The Application for Abatement was denied by vote of the assessors on April 24, 2018. The appellant timely filed an appeal with the Board on July 13, 2018. Based on the foregoing, the Board found that it had jurisdiction to hear the appeal.²

The subject property is improved with a 5,616-square-foot, Colonial-style residence ("subject dwelling") that was built in 1997. It has a total of ten rooms, including five bedrooms, along

¹ The subject property straddles the neighboring towns of Walpole and Westwood. Two of its 5.3 acres are located in Walpole, with the remaining 3.3 acres in Westwood. Only the value of the land and improvements in Westwood is at issue in this appeal.

² The record showed that the appellant made a timely first quarter payment of tax that satisfied the three-year average provisions of G.L. c. 59, §§ 64 and 65, such that the Board retained jurisdiction over the appeal.

with four and one-half bathrooms. Additional amenities include central air conditioning, a fireplace, a three-car garage, a covered front porch, a patio, and an in-ground pool. The subject dwelling was considered to be "excellent" grade construction by the assessors.

The appellant presented his testimony and additional valuation evidence in support of his request for an abatement. He explained that he purchased the subject property in November of 2010. It had been on the market for more than six months at that time, with an original asking pricing of \$1,799,000. That price was later reduced to \$1,550,000, and the appellant ultimately purchased the subject property for \$1,448,500. He testified that he believed he overpaid for the subject property due to family pressure to acquire a home large enough to accommodate both his immediate family and his in-laws.

The appellant additionally testified that he is a mortgage broker by profession and thus he is very familiar with home values and appraisals. He introduced a copious amount of documentary evidence into the record, including Multiple Listing Service listings for numerous properties that had sold in Westwood, maps, and assessment information for many additional properties in Westwood.

The appellant offered a sales-comparison analysis featuring four properties that had sold in Westwood between September of

2016 and June of 2017. Each of the properties was similar to the subject property in style, size, location, condition, and amenities. The sale prices of these properties ranged from \$1,240,687 to \$1,535,000. The appellant's opinion of the subject property's market value for the fiscal year at issue was \$1,300,000. That opinion was based on the comparable sales and assessment data that he presented, and it also took into consideration the subject property's location on a private way that receives minimal town services.

The assessors for their part offered no affirmative evidence of value, and instead rested on the assessed value of the subject property after engaging in some brief cross-examination of the appellant.

On the basis of the record in its entirety, the Board found that the appellant met his burden of proving that the assessed value of the subject property exceeded its fair market value for the fiscal year at issue. Based on all of the evidence, the Board determined that the fair market value of the subject property for the fiscal year at issue was \$1,550,000.

In reaching this conclusion, the Board found persuasive the comparable sales and assessment information offered by the appellant. With respect to his sales-comparison analysis, the properties utilized by the appellant were each reasonably comparable to the subject property, and each was a timely, arm's-

length sale. Each of these properties sold for significantly less than the subject property's assessed value of \$1,730,600.

The Board gave the most weight to the appellant's first comparison property, 29 Trailside Drive. That property was located approximately a quarter of a mile from the subject property but was slightly smaller in living area and lot size. It sold for \$1,400,000 in June of 2017. After giving weight to all of the evidence, with particular reliance on 29 Trailside Drive, the Board found a fair market value for the subject property of \$1,550,000 for the fiscal year at issue. As this amount was less than the subject property's assessed value, the Board decided this appeal for the appellant, and granted an abatement of tax in the amount of \$2,725.25.

OPINION

Assessors are required to assess real estate at its "fair cash value." G.L. c. 59, § 38. Fair cash value, also referred to as fair market value, is defined as the price on which a willing seller and a willing buyer 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).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245

(1974) (citing **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. **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)).

"[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, 682 (1982). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 394 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008). Additionally, evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. See G.L. c. 58A, § 12B; **John Alden**

Sands v. Assessors of Bourne, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308).

In the present appeal, the appellant provided ample evidence of the sale prices and assessed values of properties reasonably comparable to the subject property. After reviewing the evidence submitted by the appellant, which showed that the comparison properties sold for significantly less than the subject property's assessed value, and after taking into consideration the assessors' failure to offer evidence to undercut the appellant's valuation evidence, the Board found and ruled that the appellant met his burden of demonstrating that the subject property's assessed value exceeded its fair market value for the fiscal year at issue.

On the basis of the record as a whole, with particular reliance on the sale of 29 Trailside Drive, the Board determined a fair market value for the subject property of \$1,550,000 for the fiscal year at issue. The Board therefore decided this appeal for the appellant and granted an abatement of tax in the amount of \$2,725.25.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy

Attest: /s/ William J. Doherty
Clerk of the Board