

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DONNA LANG

v.

BOARD OF ASSESSORS OF
THE TOWN OF MARBLEHEAD

Docket No. F338437

Promulgated:
February 24, 2022

This is an appeal originally filed under the Informal Procedure¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Marblehead ("appellee") to abate taxes on real estate located in the Town of Marblehead, owned by and assessed to Donna Lang ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

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

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

Edward P. Lang for the appellant.²

Karen Bertolino, Administrative Assessor, for the appellee.

¹ 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.

² The appellant authorized her husband, Edward P. Lang, to represent her at the hearing of this appeal.

FINDINGS OF FACT AND REPORTS

Based on testimony and documentary evidence submitted to the Appellate Tax Board ("Board"), the Board made the following findings of fact.

As of January 1, 2018, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of an improved 0.344-acre parcel of land located on the waterfront with an address of 10 Hathaway Road in the Town of Marblehead ("subject property"). The subject property is improved with a single-family, contemporary-style residence containing 3,442 square feet of living area and comprised of eight rooms, including four bedrooms, as well as three full bathrooms and one half bathroom ("subject residence"). Other amenities of the subject residence include an attached two-car garage, an enclosed porch, and a large deck. Information relevant to the Board's jurisdiction is summarized in the following chart:

Assessed valuation	Tax amount Tax rate	Taxes timely paid?	Abatement application filed	Date of denial	Petition filed with Board
\$1,875,300	\$20,140.72 \$10.74/\$1,000	Yes	01/29/2019	03/29/2019	05/23/2019

Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The appellant has appealed the subject property's assessment to the Board on two previous occasions, for fiscal year 2014 and

then again for fiscal year 2018. For fiscal year 2014, the appellant brought her appeal under the Informal Procedure. She claimed that the subject property was over assessed based on a comparison of proximate properties that received adjustments for topography, whereas the subject property did not. The Board granted an abatement of \$4,235.27 for fiscal year 2014, based on a reduction in the subject property's assessed value from \$1,796,400 to \$1,414,500.³

For fiscal year 2018, the appellant again brought an appeal, this time under the Board's Formal Procedure. In ***Lang v. Assessors of Marblehead***, Mass. ATB Findings of Fact and Reports 2019-385, the appellant challenged only the land portion of the assessment. Her witness, Mr. Lang, analyzed the assessed land values of several proximate properties, dividing these values by each respective lot's acreage. From here, he developed an average price-per-acre value for all his comparable properties and compared that value to the subject property's per-acre land value. His analysis developed a much higher assessed value per acre for the subject property as compared with his comparable properties. The Board was not persuaded by the witness' analysis and issued a decision for the appellee in that appeal.

³ No written findings of fact and report were promulgated for the 2014 appeal as it was heard and decided under the Board's Informal Procedure.

In the instant appeal, the appellant again challenged only the land value of the subject property's assessment for the fiscal year at issue. Comparing the per-acre assessed land value of the subject property with the per-acre assessed land values of five purportedly comparable properties, her witness, Mr. Lang, contended that the per-acre land value of the subject property was higher, and thus disproportional, to the per-acre land values of the comparable properties. He argued that the topography of the subject property impaired its usability relative to the comparison properties. He further pointed out that the subject property had less water frontage than that of the comparison properties. Based on these contentions, the appellant's witness reasoned that the per-acre land value of the subject property should be less than that of the comparison properties.

Karen Bertolino, Administrative Assessor, presented the case on behalf of the appellee. Ms. Bertolino presented a comparable-sales analysis using six sales of purportedly comparable properties. Ms. Bertolino adjusted her comparison properties for differences between those properties and the subject property that affect fair cash value, including construction quality, condition, renovations, and additional features like patios and garages. After her adjustments, the purportedly comparable properties yielded sale prices ranging from \$1,775,000 to \$2,247,000. The

subject property's assessment at \$1,875,300 was at the lower end of that range.

The Board found that the appellant's witness failed to demonstrate that his purportedly comparable properties were sufficiently similar to the subject property. Furthermore, Mr. Lang's method of comparing the per-acre assessment of the land portion of the subject property to the average per-acre land assessments of his comparison properties failed to consider whether the total assessed value of the subject property reflected its fair cash value for the fiscal year at issue. This methodology also disregarded whether there were fundamental differences between the subject property and the comparison properties that affect fair cash value. Moreover, the appellant's analysis ignored a key principle of assessment - that smaller lots command a larger value per square footage than larger lots. Finally, the appellant failed to advance evidence to quantify how a sloping lot or less water frontage would reduce the value of the subject property.

Overall, the Board found that the appellant's analysis was inadequate to establish that the subject property was overvalued. By contrast, the appellee's witness offered evidence of six properties that she demonstrated to be comparable to the subject property, and the witness further provided adequate adjustments to those properties in comparison with the subject property. The Board

found that the appellee provided a sound analysis in support of the subject property's overall assessment.

Accordingly, the Board issued a decision in favor of the appellee in the instant appeal.

OPINION

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 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 a 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 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 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)). In the instant appeal, the appellant conceded that the improvement portion of the subject property's assessment reflected its fair cash value; she contested only the land portion of the assessment.

To support her claim that she can successfully challenge just the land portion of her assessment, the appellant cited an excerpt from the Supreme Judicial Court's opinion in **Mass. General Hospital v. Belmont**, 238 Mass. 396, 403 (1921), in which the Court made the following ruling: "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive."

However, this case excerpt is taken out of context. The appellant failed to consider a central tenet of real estate assessment, which the Board has repeatedly stated: in an abatement appeal, the only relevant inquiry is whether the overall assessment of the subject property is excessive. See **Mass. General Hospital**, 238 Mass. at 403. Indeed, the Supreme Judicial Court in **Prudential Insurance Co.** stressed that "[t]he tax on a parcel of land and the

building thereon is one tax" and that the ultimate conclusion is whether "[t]he single assessment is excessive." **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 316-17 (1941). The Board has time and again ruled that an appellant cannot meet her 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).

The appellant's witness offered a comparable-assessment analysis comparing the per-acre value of the subject property's land assessment with the per-acre value of several properties. General Laws c. 58A, § 12B provides in pertinent part that "at any hearing relative to the assessed fair cash valuation or

classification of property, evidence as to fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible." Such evidence may provide adequate support for the granting of an abatement. ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-08. However, purportedly comparable properties used in a comparable-assessment analysis must be sufficiently like the subject property to be probative evidence of the subject property's fair cash value. The Board found that the appellant's witness did not demonstrate that his selected properties were sufficiently comparable to the subject property to provide credible evidence of fair cash value.

Where there are differences, comparable properties must be adjusted for those differences that affect fair cash value; otherwise, the analysis has no probative value. See ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 402-03 (holding that the taxpayers "did not . . . provide a coherent and detailed comparable sales analysis" and "[c]onsequently, the Board found and ruled that the appellants' comparable assessment methodology was spurious and any values derived from it were hollow and unfounded"), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (decision under Rule 1:28). The appellant's witness failed to make any adjustments for differences between the subject property and purportedly comparable properties.

Moreover, the appellant failed to advance evidence to quantify how a sloping lot or less water frontage would reduce the value of the subject property. See, e.g., **Ligor v. Assessors of Wellesley**, Mass. ATB Findings of Fact and Reports 2004-626, 632, 637 (finding that the taxpayer's contention that twenty-three percent of the parcel was under water was not sufficient to prove that the subject property's land value or its overall assessment was excessive).

Finally, the appellant's witness failed to adjust his purportedly comparable properties for the principle of diminishing returns, also known as economies of scale, which considers that as unit size increase, the per-square-foot value decreases. See **Boquist v. Assessors of Lincoln**, Mass. ATB Findings of Fact and Reports 2014-704, 715 ("[T]he appellant failed to take into consideration the well-established principle of diminishing returns with increases in unit size. The subject property's prime lot was significantly smaller than those of his comparison properties, and it was therefore logical that it would be valued at a higher value per square foot."). See also Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* 172 (15th ed., 2020) ("Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.").

The appellee, by contrast, offered probative evidence consisting of six properties that she demonstrated to be comparable

the subject property. The appellee's witness further offered credible adjustments to those properties in comparison to the subject property. After adjustments, the subject property's assessed value was shown to be well within the range of assessed values of the comparable properties.

In summary, the appellant failed to present reliable or credible evidence establishing overvaluation of the subject property as a whole. Mr. Lang's analysis focused only on the land value of the subject property rather than the overall assessment, and the properties that he selected were not demonstrably comparable to the subject property nor did he provide adjustments to compensate for those differences. The Board thus found and ruled that the appellant failed to meet her burden of proving that the subject property was overvalued for the fiscal year at issue. By contrast, the appellee offered credible evidence supporting the subject property's assessment.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

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