

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

MARCO INVESTMENTS, LLC

v.

**BOARD OF ASSESSORS OF
THE TOWN OF WELLFLEET**

Docket No. F347734

Promulgated:
March 25, 2025

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 Wellfleet ("assessors" or "appellee") to abate a tax on real estate owned by and assessed to Marco Investments, LLC ("appellant") for fiscal year 2023 ("fiscal year at issue").

Commissioner Bernier heard this appeal. He was joined by Chairman DeFrancisco and Commissioners Good, Elliott, and Metzger 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 1.34.

Martin Rebhun, managing member, pro se, for the appellant.

Jeffrey Blake, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2022, the relevant valuation date for the fiscal year at issue, the appellant was the assessed owner of commercial real property with an address of 286 Main Street, in the Town of Wellfleet ("subject property"). The subject property was built in 1935 and contains 1,572 square feet of building/retail space and 2,614 square feet of land.

The assessors valued the subject property at \$587,800 for the fiscal year at issue and assessed a tax thereon, at a rate of \$6.65 per \$1,000, in the total amount of \$4,026.14, inclusive of the Community Preservation Act surcharge. The tax assessed on the subject property was less than \$5,000, therefore, in accordance with G.L. c. 59, § 64, the appellant's late payment of the first installment of tax and the interest incurred did not prevent the Board from having jurisdiction over the matter. On November 20, 2022, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application, which the assessors denied on December 22, 2022. The appellant seasonably filed this appeal with the Board on February 23, 2023. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant presented its case through the testimony of Mr. Rebhun, managing member of the appellant, and the submission of a valuation analysis prepared by Mr. Rebhun.

Mr. Rebhun acknowledged that the appellant purchased the subject property in 2019, three years prior to the valuation date, for \$550,000. He stated at the outset of his testimony that he was not arguing that the assessed value of the subject property at \$587,800 was inconsistent with fair cash value. He contended, rather, that the fair cash value of the subject property was simply irrelevant to the appellant's request for an abatement. He argued that this appeal was based on what he deemed to be a disproportionately high assessment of the subject property for the fiscal year at issue in comparison with the assessments of certain other commercial properties located in the downtown business district of the Town of Wellfleet.

The purportedly comparable properties ranged widely in elements such as size, age, and condition. Without making any adjustments to account for differences between the properties, Mr. Rebhun applied an average of the price per square foot of the purportedly comparable properties to the square footage of the subject property to arrive at the appellant's opinion of fair cash value of the subject property for the fiscal year at issue of \$174,731.

Mr. Rebhun made no assertion that the real estate market had changed in any way since the time of the appellant's purchase of the subject property that would account for his opinion of value being drastically less than the sale price just three years prior to the valuation date.

Furthermore, the appellant failed to introduce any comparable sales for consideration. Moreover, despite having asserted that the subject property was disproportionately assessed in comparison to his selection of purportedly comparable properties, the appellant introduced no evidence of any intentional scheme by the assessors of valuing comparable properties or classes of properties at a lower percentage of fair cash value than the subject property, as discussed in the Opinion below.

The assessors, for their part, submitted jurisdictional documents, cross-examined the appellant, and then rested on the presumed validity of the assessment.

The Board found and ruled that, of the evidence of record, the sale price paid by the appellant in an arm's length transaction only three years earlier was the strongest indicator of value. Furthermore, the Board found and ruled that the appellant's comparison of assessed values per square foot of the subject property to those of purportedly comparable properties lacked substantial probative value, as the appellant made no adjustments

to account for differences which affect fair cash value, and the record did not otherwise reflect such adjustments.

Based on the record in its entirety, the Board found and ruled that the appellant presented insufficient evidence to support a finding that the subject property was overvalued for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this 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 will agree where 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 its assessed value. "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)). In the present appeal, the appellant did not provide evidence of flaws or errors in the assessors' method of valuation and failed to present affirmative evidence of overvaluation.

"We have observed in the past that '[a]ctual sales are . . . very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for a particular property.'" **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981). The record in this appeal gave no indication of a downward trend in the real estate market between the valuation date and the date of purchase by the appellant three years earlier. To the contrary, the Board found that the purchase price of \$550,000 in 2019 fatally undermined the appellant's claim that the subject property had a fair cash value that was significantly lower than its assessed value of \$587,800 for the fiscal year at issue.

The appellant contended that the assessors disproportionately assessed the subject property, compared to the purportedly

comparable properties selected by the appellant. “[T]o obtain relief on the basis of disproportionate assessment, a taxpayer must show that there is an ‘intentional policy or scheme of valuing properties or classes of property at a lower percentage’ of fair cash value than the taxpayer’s property.” **Brown v. Assessors of Brookline**, 43 Mass. App. Ct. 327, 328 (1997) (quoting **Shoppers’ World, Inc. v. Assessors of Framingham**, 348 Mass. 366, 377 (1965)). See also **Wardwell v. Assessors of Wellesley**, Mass. ATB Findings of Fact and Reports 2021-160, 165-66; **Scullane v. Assessors of Wellesley**, Mass. ATB Findings of Fact and Reports 2001-85, 95. The appellant offered no such evidence in this appeal. There was no evidence in the current appeal to demonstrate that the assessors engaged in an “intentional widespread scheme of discrimination.” **Stilson v. Assessors of Gloucester**, 385 Mass. 724, 728 (1982).

Properties used in a comparable-assessment analysis must be comparable to the subject property, meaning that they must share “fundamental similarities” with the subject property, including similar age, location, and size. **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). “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.**, 383 Mass. at 470. Assuming the properties cited by the appellant were comparable to the subject property, the appellant failed to make appropriate

adjustments, and such adjustments were not evident elsewhere in the record. Therefore, the Board found and ruled that the comparable-assessment analysis lacked probative value for determining the subject property's fair cash value for the fiscal year at issue.

Based on the entirety of the record, the Board found and ruled that the appellant did not meet its burden of proving that the assessed value of the subject property was greater than its fair cash value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board