



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. F337386

MARC OLIVER MIDDLETON

Appellants.

v.

**BOARD OF ASSESSORS OF
THE CITY OF LOWELL**

Appellee.

DECISION WITH FINDINGS

This appeal concerns the appellant's overvaluation claim for fiscal year 2019 ("fiscal year at issue") concerning property located in the City of Lowell. On January 1, 2018, the relevant valuation and assessment date, the appellant was the assessed owner of a 620-square-foot office condominium unit numbered 1D and located at 219 Central Street ("subject unit"). The subject unit is located on the first floor of the Fiske Condominium, a multi-story building situated at the corner of Jackson and Central Streets. According to the property record card maintained by the appellee, the subject unit has no bathrooms and, as testified to by the appellant, is without basement storage space and dedicated parking.

For the fiscal year at issue, the subject unit was assessed for \$61,200, an amount which the appellant maintained exceeded its fair cash value. To establish that the subject unit was overvalued, the appellant presented a sales comparison analysis and supporting documentation — including property cards printed from the City of Lowell website, Multiple Listing Service listings with photographs, and deeds of sales — featuring three purportedly comparable commercial condominium units in Lowell that sold during 2016, ranging in size from 2,006 square feet to 2,975 square feet. Averaging the per-square-foot sale price for each of these three comparables, the appellant arrived at a value of \$57.23 per square foot for his unit — for a total value of \$35,482.60.

As further support for his position, the appellant pointed to certain negative features of his unit — the odd, non-rectangular shape, and a lack of associated parking and storage area.

The assessors commented that the appellant's purported comparables were located in a different part of the City, were more suited to high industrial usage, and, being larger in size than the subject unit, were worth less per square foot.

The assessors presented their own comparable sales, one of a commercial condominium unit on nearby Market Street which sold in 2016, and two units in the Fiske Condominium — the location of the subject unit — which sold in 2019. For each unit, the assessors provided a property record card, unit plan, and unit deed, and photographs of the space. The units in the Fiske Condominium sold with deeded storage areas, for which either no additional or nominal consideration was paid. The assessors arrived at their sale prices per square foot, and their assessed values per square foot for each of these comparables by taking into account only the number of square feet of first floor area. The sale prices per square foot ranged from a high of \$159.20 for the Market Street property to a low of \$100 for Unit 1E in the Fiske Condominium.

The assessors summarized that the market had gone up in value by 35% since a prior decision of the Appellate Tax Board regarding the subject property for fiscal year 2014, when the Board determined a value of \$45,000, and that their best sale was of Unit 1E in the Fiske Condominium, directly next door to the subject unit, which sold on May 30, 2019 for \$70,000, or \$100 per square foot. Using an indicated value of \$100 per square foot, the subject unit was worth \$62,000; based on a 35% increase in value from the Board's determination of value for fiscal year 2014, it was worth \$60,750. The assessors stated that the assessed value of the subject unit for the fiscal year at issue was between these two amounts.

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).

A taxpayer has the burden of proving that the taxpayer's property has a lower value than that assessed. The burden of proof is upon the taxpayer to make out a right as a matter of law to an abatement of the tax. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The Board is entitled to presume that the valuation made by the assessors is valid unless the taxpayer proves to the contrary. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984).

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***, 393 Mass. at 600. However, the appellant introduced no probative evidence to establish that his office condominium unit was assessed for more than its fair cash value.

The appellant presented three purportedly comparable commercial condominium units in Lowell which sold during 2016 for an average price per square foot well below the per-square-foot assessed value of his unit. Although 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, an appellant bears the burden of establishing that properties share “fundamental similarities” with the subject property, including age, location and size. ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). The appellant did not meet this burden. The appellant argued that the three sale prices, adjusted for square footage, parking, age, and condition, supported a lower value for his unit, but he did not establish the comparability of these comparables with the subject unit, particularly given their size and location. The assessors, on the other hand, noted the location of these properties in a different part of the City, their suitability for high industrial use, and their larger size affecting their per-square-foot value.

The appellant also critiqued the assessors’ analysis before the Board — first because it included sales information for 2019, which he claimed was too distant from the January 1, 2018 valuation date at issue in this appeal. However, the parties agreed that there were no relevant sales of commercial condominiums in 2017 and the appellant, himself, observed that there were few sales of commercial condominium units in the City. The appellant also pointed out that calculating the per-square-foot sale price of the Market Street property using a denominator including the basement area would have confirmed that his unit was worth less than its assessed value. The appellant’s analysis, however, failed to take into account that this basement space was valued at significantly less than the first floor area. On a proportionate basis, based on fiscal year 2020 values in the property record card, the first floor area at 61 Market Street was assessed at approximately \$100 per square foot for fiscal year 2019 — slightly higher than the smaller subject unit’s per-square-foot value. Even accepting the appellant’s view of the irrelevance of the 2019 sales information, the assessed value of the Market Street property for fiscal year 2019 was clearly informative with respect to the value of the appellant’s unit.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By: */s/ Patricia Ann Metzger*
Patricia Ann Metzger, Commissioner

A true copy,

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

Date: May 12, 2020

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.