**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**GEORGE D. & ANNE M. MISLAK v. BOARD OF ASSESSORS OF THE TOWN OF GREENFIELD**

Docket No. F329629 Promulgated:

 January 25, 2019

This is an appeal originally filed under the informal procedure pursuant to G.L. c. 58A, § 7A[[1]](#footnote-1) and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Greenfield (“appellee” or “assessors”) to abate a tax on real estate located in the Town of Greenfield, owned by and assessed to George D. and Anne M. Mislak (“appellants”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

Commissioner Chmielinski (“Presiding Commissioner”) heard the appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellants.

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

*George D. and Anne M. Mislak*, *pro se*, for the appellants.

*Audrey Murphy*, Chief 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 Presiding Commissioner made the following findings of fact.
 On January 1, 2015, the appellants were the assessed owners of a condominium unit with an address of 9 Silver Crest Lane (“subject condominium”). The subject condominium is a one-story unit that was built in 2013 and contains 1,311 square feet of finished living area, which is comprised of four rooms, including two bedrooms, as well as one full bathroom and one three-quarter bathroom. The appellants purchased the subject condominium on August 21, 2014 for $258,900.

 For the fiscal year at issue, the assessors valued the subject condominium at $269,900 and assessed a tax, at the rate of $21.81 per $1,000, in the total amount of $5,886.52. The appellants paid the tax due without incurring interest and on January 5, 2016 they timely filed an abatement application with the appellee.

The original property record card on file with the assessors for the fiscal year at issue mistakenly listed a gas fireplace as being present in the subject condominium. The appellee inspected the subject condominium and noted the absence of a fireplace. Therefore, on February 23, 2016, the appellee granted a partial abatement adjusting the assessment down to $264,300. Not satisfied with that abatement, the appellants seasonably filed an appeal with the Appellate Tax Board (“Board”) on April 22, 2016. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over the instant appeal.

The instant appeal is one of four related appeals pertaining to similarly situated condominiums in the Silver Crest Lane development. The taxpayers in each of these four cases relied on numerous property record cards of condominiums and houses in the town in an attempt to demonstrate that their own condominium was overvalued for the fiscal year at issue.

The four Silver Crest Lane condominiums were sufficiently comparable to one another, and purchased from the same developer sufficiently close to the assessment date, such that their sale prices were persuasive evidence of fair market value for each other. Pertinent information from the sales of these four comparable condominium units is summarized below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Property** | **Subject condominium****(9 Silver Crest Lane)** | **13 Silver Crest Lane** | **43 Silver Crest Lane** | **4 Silver Crest Lane** |
| **Year built** | 2013 | 2010 | 2010 | 2015 |
| **Purchase date** | 08/21/2014 | 08/17/2012 | 10/22/2012 | 09/01/2015 |
| **Sale price** | $258,900 | $249,900 | $257,000 | $254,900 |
| **Building style** | 1-story condominium | 1-story condominium | 1-story condominium | 1-story condominium |
| **Total finished area (sf)** | 1,311  | 1,311 | 1,311 | 1,314 |
| **Rooms/bedrooms** | 4/2 | 4/2 | 4/2 | 4/2 |
| **Bathrooms** | 1.75 | 1.75 | 1.75 | 1.75 |

A comparison of the sale of the subject condominium with the sales of these similarly situated condominiums indicated that the subject condominium’s sale price, together with the sale prices paid for the other three comparable condominiums, constituted persuasive, credible evidence of the subject condominium’s fair cash value. On the basis of these sales, and adjusting for minor differences among them, the Presiding Commissioner determined that the fair cash value of the subject condominium for the fiscal year at issue was $251,000.

The Presiding Commissioner thus determined that the appellants met their burden of proving a fair market value for the subject condominium that was less than its assessed value. Accordingly, the Presiding Commissioner issued a decision for the appellants and ordered an abatement in the amount of $290.07.

**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 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).

“‘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)).

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. v. Assessors of Lynn,*** 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

The actual sale of the property at issue itself, particularly when its sale is proximate to the valuation and assessment date, is “ʽvery strong evidence of fair market value, for [it] represent[s] what a buyer has been willing to pay to a seller for [the property under appeal].’” ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 469 (1981) (quoting ***First National Stores, Inc. v. Assessors of Somerville,*** 358 Mass. 554, 560 (1971)). *See also* ***Kane v. Assessors of Topsfield***, Mass. ATB Findings of Fact and Reports 2000-409, 411 (finding that a sale of the property at issue three months before the relevant assessment date was the best evidence of the property’s fair cash value). The recent sale of the subject condominium, less than five months from the relevant valuation and assessment date, was thus strong evidence of its fair market value, and was the first indication to the Presiding Commissioner that the assessment exceeded that value.

Next, 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, 400 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929)), *aff’d,* 73 Mass. App. Ct. 1107 (2008). Thus, the sales of the other three condominiums from Silver Crest Lane that were subjects of companion appeals before the Board further supported the appellants’ contention that the assessment exceeded its fair market value.

In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. ***General Electric Co.,*** 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn,*** 392 Mass. 296, 300 (1984). The Board need not specify the exact manner in which it arrived at its valuation. ***Jordan Marsh v. Assessors of Malden,*** 359 Mass. 196, 110 (1971). The fair cash value of property cannot be proven 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).

Based on the evidence presented, the Presiding Commissioner found and ruled that the fair market value of the subject condominium was $251,000 for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellants in this appeal and granted an abatement in the amount of $290.07.

**THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

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

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. Pursuant to G.L. c. 58A, § 7A, the assessors elected to transfer this appeal to the formal procedure. [↑](#footnote-ref-1)