

2-2-18



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No. F332187

MONTE YAFFE
Appellant.

**BOARD OF ASSESSORS OF
THE CITY OF NEWTON**
Appellee.

DECISION WITH FINDINGS

The Decision is for the appellee. On the basis of the testimony and evidence introduced at the hearing of this appeal, the Board makes the following findings and rulings.

This appeal involves the assessed value of a property located at 79 Florence Street, Unit #308S in Newton (the "subject property") for fiscal year 2017 (the "fiscal year at issue"). The subject property is a condominium unit in a development known as Hampton Place, which has two six-story condominium buildings. Amenities offered to residents of Hampton Place include 24-hour concierge service, indoor and outdoor pools, a fitness center, and a clubhouse with a billiards room. It is located off of Route 9, and is convenient to many local shops, restaurants, and other businesses.

The subject property has a total finished living area of 1,731 square feet, which includes two bedrooms as well as two and one half bathrooms. Its assessed value for the fiscal year at issue was \$682,400.

The appellant, who represented himself at the hearing of this appeal, offered into the record documentary evidence, including various items of correspondence with the assessors, along with his own testimony. He conceded that the assessed value of the subject property most likely did not exceed its fair cash value for the fiscal year at issue. The appellant's claim for abatement was primarily premised on the marked increase in assessed values from the prior fiscal year experienced by the units within the Hampton Place development, which according to the appellant averaged 30%. It was the appellant's contention that the sizeable increase in the assessed values of the units at

Hampton Place was not consistent with the increases elsewhere in Newton, or in the Commonwealth at large.

In support of his position, the appellant entered into the record an exhibit which showed average percentage increases in real estate taxes between fiscal years 2016 and 2017 in the following towns: Ayer, Bellingham, Lincoln, Sherborn, Shirley, and Weston. The average percentage increases in those communities ranged from 1% to 5%.

In addition, the appellant offered an exhibit containing information regarding four recent sales in Newton, from both within and without the Hampton Place development, which in his opinion exemplified the "punitive" nature of the increases in assessed values at Hampton Place. Sale number one involved a unit within the Hampton Place development. According to this exhibit, the sale price of that unit was \$2,500,000, and its assessed value for the calendar year in which it sold was \$1,171,000. Sale number two was a single-family house located at 725 Chestnut Street. According to this exhibit, that property sold for \$2,088,000, but its assessed value for the calendar year in which it sold was \$773,200. Sale number three was a single-family house located at 43 Parker Street. According to this exhibit, that property sold for \$2,350,000, and its assessed value in the calendar year in which it sold was \$949,700. Finally, sale number four was a single-family house located at 286 Watertown Street. According to this exhibit, that property sold for \$819,000, and its assessed value was \$581,300 in the calendar year in which it sold.

The exhibit did not provide the sale dates, property record cards, nor any comparative information for these properties, such as the amount of finished living area or lot size. The assessors, however, had knowledge of several of these sales, and stated that they involved homes that had either been demolished and replaced or completely gutted and renovated, such that the assessments cited by the appellant reflected the previous dwelling, whereas the sale prices reflected the newer, improved dwelling.

In addition, the appellant included in his submissions an exhibit showing 14 sales of condominium units within Hampton Place, six of which sold during 2015 and eight of which sold during 2016. The sale prices ranged from \$664,160 to \$1,600,000. The exhibit also contained the fiscal year 2016 and 2017 assessed values for each of the units, as well as the assessed-value-to-sale-price ratio of each property for those two fiscal years. The exhibit purported to show that the properties that sold in 2015 had an average assessed-value-to-sale-price ratio of 66.79% for fiscal year 2016, which increased to 90.28% for fiscal year 2017. The properties that sold in 2016 had an average assessed-value-to-sale-price ratio of 62.28% for fiscal year 2016, which increased to 80.97% for fiscal year 2017.

In support of the assessment, the assessors entered voluminous documentary evidence into the record, including an appraisal of the subject property, along with

property record cards, deeds, building permit information, and multiple listing service ("MLS") listings for numerous properties within the Hampton Place development.

The assessors' appraisal report contained a sales-comparison analysis featuring eight Hampton Place condominium units that had sold between April of 2015 and April of 2016. Most units were similar in size and floor plan to the subject property, but one was a slightly-smaller one-bedroom unit. These comparison properties sold for prices ranging from a low of \$660,000 for the aforementioned one-bedroom unit, to a high of \$1,060,000. After making adjustments to account for differences from the subject property, these properties had an adjusted sale price range of \$730,000 to \$916,000. From this appraisal, the assessors concluded an indicated fair market value for the subject property of \$784,500.

The assessors also offered an exhibit that contained additional sales and assessment data for a number of units within the Hampton Place development, each of which had sold during 2015 or 2016. The sale prices for the units ranged from a low of \$664,160 to a high of \$3,000,000.

On the basis of all of the evidence, the Board found that the appellant failed to meet his burden of establishing his right to an abatement. The taxpayer has the burden of proving that he is entitled to an abatement. **Tennessee Gas Pipeline Co. v. Assessors of Agawam**, 428 Mass. 261, 262 (1998); **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (citation omitted). "A taxpayer may prove a right to an abatement by either introducing affirmative evidence of fair cash value, or by proving that the assessors erred in their method of valuation." **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984)(citation omitted). "The 'fair cash value' of real property, for tax purposes, is the price that an owner willing but not compelled to sell ought to receive from one willing but not compelled to buy." **Tennessee Gas Pipeline Co.**, 428 Mass. at 262.

The record in its totality – including information offered by the appellant and the assessors - provided persuasive evidence that the subject property's assessed value did not exceed its fair cash value for the fiscal year at issue. In reaching this conclusion, the Board placed considerable weight on the appraisal offered by the assessors, which contained numerous, highly comparable and timely sales, along with appropriate adjustments to account for any differences from the subject property.

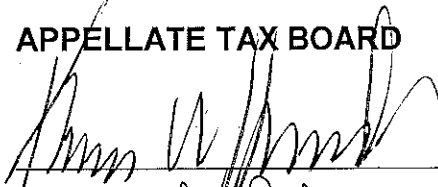
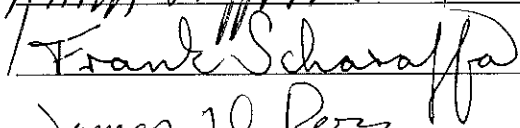
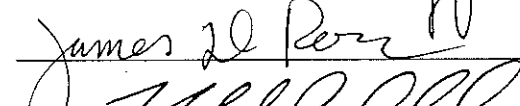
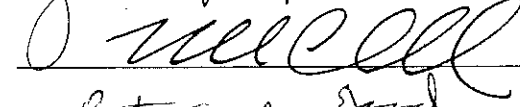
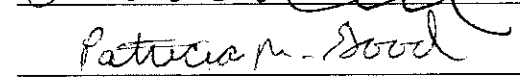
In contrast, the Board found that the appellant's evidence did not support the conclusion that the subject property's assessed value exceeded its fair cash value, nor did it demonstrate an error on the part of the assessors. Rather, the appellant's evidence focused primarily on the relative increases in assessed values of the units at Hampton Place, and it consisted mainly of bare references to sale prices and assessed values of various properties, without a discussion of the characteristics of any of the properties. "In an abatement appeal, the only relevant inquiry is whether the overall assessment of the subject property" exceeds its fair cash value. **Mass. General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). "The appellant bears the burden of

‘establishing the comparability of ... properties [used for comparison] to the subject property[ies].’” **Wood v. Assessors of Fall River**, Mass. ATB Findings of Fact and Report 2008-213, 2008-225. (Citation omitted.) “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. v. Assessors of Boston**, 383 Mass. 456, 470 (1981). Reference to the assessed values and sale prices of numerous properties, without information regarding the comparative characteristics of those properties, does not provide a reliable basis for determining fair cash value. Similarly, evidence which merely demonstrates increases in assessed values among a number of properties does not provide persuasive evidence of overvaluation, particularly where the evidence indicates, as it did here, that market values had increased during the relevant time period. See **Corrado v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2011-816, 828.

The evidence was likewise insufficient to support a finding of disproportionate assessment. To prevail in a claim of disproportionate assessment, a taxpayer “would have to show that he has been the victim of an intentional scheme of widespread disproportionate assessment by the assessors.” **Coomey v. Assessors of Sandwich**, 367 Mass. 836 (1975) (citing **Shoppers' World, Inc. v. Assessors of Framingham**, 348 Mass. 366, 377-78 (1971)). See, e.g., **Bell v. Assessors of Boston**, Mass. ATB Findings of Fact and Reports 2006-754; **Shillman v. Assessors of Weston**, Mass. ATB Findings of Fact and Reports 2006-108; **Ecker v. Assessors of Town of Chatham**, Mass. ATB Findings of Fact and Reports 2003-81. Here, the appellant’s attempt to demonstrate a disconnect between sale prices and assessed values of several comparison properties was inapt. As stated above, in some cases, the appellant utilized assessment data which reflected older, unimproved dwellings, while the sale prices actually reflected newer and much improved dwellings. Moreover, the appellant compared sale prices to the assessed values of properties during the calendar year in which they sold. The assessed values for those properties would have been established as of January 1st of the preceding calendar year, and thus would not and could not have taken into consideration the sale price. As such, the appellant’s evidence regarding assessment-to-sale-price ratios was neither persuasive nor adequate to support a finding of disproportionate assessment.

In conclusion, the Board found that the appellant failed to demonstrate that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue, or to otherwise establish his entitlement to an abatement. Accordingly, the Board issued a decision for the appellee in this appeal.

APPELLATE TAX BOARD

	Chairman
	Commissioner
	Commissioner
	Commissioner
	Commissioner

Attest: 
Clerk of the Board

Date:
(Seal) FEB - 2 2018

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.