



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket Nos. F324354, F327445

O'GRADY, VIRGINIA M. TRUST

Appellant

**BOARD OF ASSESSORS OF
THE TOWN OF ROCKPORT**

Appellee

DECISION WITH FINDINGS

The decisions are for the appellee. After considering the testimony of the witnesses and the documentary evidence introduced at the hearing of these appeals, the Board makes the following findings of fact and rulings of law.

These are appeals from the refusal of the assessors to abate real estate tax for fiscal years 2014 and 2015 on property owned by the appellant in the Town of Rockport. The property that is the subject of these appeals is located at 64 Long Beach Road in the Long Beach neighborhood of Rockport. Long Beach is a long, sandy beach located in the southern portion of Rockport near the Gloucester border.

The residential dwellings located in the Long Beach neighborhood, including the subject property, are protected by a concrete sea wall; a concrete sidewalk runs on the top of a bank on the land of the sea wall. The sea wall is approximately 3,400 feet in length and stretches the entire length of the beach. Wooden stairs located at intervals of approximately 200 feet along the sea wall provide access to the beach.

The only vehicular access to Long Beach is over private land, whose owner charges an annual fee of \$125 to Long Beach neighborhood residents for access. During the occupancy season, employees of the owner operate a gate and monitor traffic accessing Long Beach. Invitees of the Long Beach neighborhood residents are allowed vehicular access to Long Beach, but other Rockport residents and the general public are not.

The only other means of access to Long Beach are from Cape Hedge Beach to the north and a Gloucester beach to the south. Cape Hedge Beach has a parking lot for 240 cars displaying Rockport resident stickers. The Gloucester beach has no public parking but there are two private unpaved lots where parking is available for \$40 day on weekends and \$20 per day during weekdays. Accordingly, although Long Beach is a public beach, access and parking for non-Long Beach residents is limited.

Numerous single-family, cottage-type dwellings are located behind the seawall and sidewalk. The quality of the cottages ranges from basic, seasonal cottages with minimal finishes to those with finishes of a quality comparable to a year-round residence. There are 154 dwellings in the Long Beach neighborhood. The dwellings are divided among three rows, a "front row," a "second row," and a "third row," although there are only a few dwellings in the third row. The subject property is located in the "front row" with unrestricted ocean views and direct beach access.

The land in the Long Beach neighborhood is owned by the Town but leased to individual leaseholders. None of these properties has legally recognized and recorded property lines; the lots are identified by lot lines that were defined by the Town as a practical matter to lease the land. The dwellings located on the leased land are owned by the leaseholders.

Until recently, the lots were leased under 10-year leases at fixed annual rents ranging from \$2,543 for lots in the front row to \$1,568 for lots in the second and third rows. New ground leases were issued in 2014 under similar 10-year terms but include provisions calling for annual rents to gradually increase over the term of each lease to \$16,419 for lots in the front row, \$9,032 for lots in the second row, and \$6,087 for lots in the third row.

Occupancy of the dwellings is restricted under the leases to the period from April 1 to December 1. For some properties, the restricted seasonal use is also physical; the area is serviced by year-round town water but service lines leading from the town water main line to many properties are not deep enough to accommodate year-round use due to the risk of freezing.

The subject property is a front row property located on a 3,200 square foot lot with an ocean view and 36 feet of ocean frontage along the boardwalk. Like the other lots in the Long Beach neighborhood, the subject lot benefits from the protection afforded by a concrete seawall. The lot has no street frontage. There are two parking spots available across Long Beach Road.

The subject dwelling is a 1,818 square foot, two-story, cape-style dwelling with 5 bedrooms and 1.5 baths; the kitchen and baths are described as "semi-modern." It has a 927 square foot basement that is 20 percent finished. The dwelling has ducted, gas-fired, forced-hot-air heat but no air conditioning. There are no built-in light fixtures in the first floor ceilings and the kitchen is in need of modernization. There is a 330 square foot open porch and a 162 square foot wooden deck.

The assessed value of the subject property is \$678,700 for fiscal year 2014 and \$677,300 for fiscal year 2015. The appellant timely paid the taxes due and timely filed its abatement applications with the assessors and appeals to this Board. Accordingly, the Board has jurisdiction to hear and decide these appeals.

I. THE APPELLANT'S CASE

The appellant presented their valuation evidence principally through the testimony of Douglas Guidry, whom the Board qualified as an expert witness. Mr. Guidry recognized that, although there have been some 22 sales in the Long Beach neighborhood during calendar years 2011 through 2015, these sales were not of the fee simple interest in the properties because the sellers conveyed the dwellings but only a leasehold interest in the land. Accordingly, the price paid by a Long Beach purchaser was for the dwelling and a leasehold interest in the land, not the fee simple interest in the land and building, which is the basis of valuation for real estate tax purposes.

Mr. Guidry reviewed the ground leases and interviewed market participants and concluded as follows:

Despite the lease clauses that give the town the right to unilaterally terminate the lease at any time and despite the requirement that the tenant remove all improvements within six months after the end of the lease term (or ownership reverts to the landlord), Long Beach tenants have continued to make improvements and additions to their residences. In fact, there are three examples of purchases of leasehold interests in which the buyer subsequently demolished the existing building and constructed an entirely new residence. The total costs of these sales and constructions range from \$632,000 to \$1,100,000. We have interviewed the buyers of these transactions and have concluded that they are anticipating that the landlord will continue the historic pattern and renew the lease with the current tenant. These particular tenants seem to be anticipating what is in effect, if not in fact, a first right of refusal on a lease renewal. In any event, if their leasehold interests remain marketable, given the very desirable location and the unique proximity to an excellent, sandy beach in a somewhat exclusive location and given the scarcity of such locations, it is likely that the current leaseholder would not have difficulty in finding a buyer at his cost point in the current market.

Mr. Guidry also noted a decline in the prices paid for Long Beach properties during the fiscal years at issue, but a recovery in calendar year 2015. Based on his interviews with owners and brokers, Mr. Guidry believed that the declines reflected the increase in lease payments and other terms in the current leases, as well as potential costs associated with the seawall. Based on his study of the Long Beach market, Mr. Guidry produced a graph showing a decline from approximately \$550 per square foot of gross living area one month prior to the valuation date for fiscal year 2014 to approximately \$500 per square foot of gross living area one month prior to the valuation date for fiscal year 2015.

Mr. Guidry believed that this temporary decline was unique to the leasehold sales on Long Beach and not reflective of the market for fee-simple sales of ocean-front residential properties in the North Shore. Rather, he found that the market for such

properties is strong, with dwindling inventory and appreciating values, particularly for the limited supply of oceanfront properties. He also recognized that Long Beach is a premier location in the relevant market, observing that:

Rockport and the State of Massachusetts both have extensive coastlines but much of it is either rocky or cobble. Sandy beaches are much more desirable as recreational destinations and Long Beach is as fine a sandy beach as any on the North Shore in terms of its size and sand. Many sandy beaches are part of state or local parks or conservation areas where private residential development is not allowed. Sandy beaches where residential development has been allowed and where the residences are in very close proximity to the water as at Long Beach are relatively rare on the North Shore of Massachusetts.

Recognizing that he needed to value the fee simple interest in the subject property and that there were no sales of fee simple interests in the Long Beach neighborhood, Mr. Guidry expanded his search to other areas of Rockport and surrounding communities, including: downtown Rockport on the harbor; other areas of Rockport on lots significantly larger than the subject lot; and properties with sandy beaches in Essex, Ipswich, Gloucester, and on Plum Island.

Mr. Guidry conceded that the sales he reviewed in these locations "may not be comparable to the subject" property but he used them to "boil out" various elements of value for use in his adjustment process. By using what he called "paired sales" of properties that he believed were comparable to each other with the exception of one feature, Mr. Guidry attempted to extrapolate the value of that feature for use in his adjustment process. The primary features Mr. Guidry attempted to value using this method included location and lot size. By determining the values attributable to these features, Mr. Guidry adjusted the sale prices of his various comparable properties to arrive at his opinion of value for the subject property. He also adjusted his comparable property sale prices for other factors, which he conceded were made on a qualitative basis and were subjective.

For example, Mr. Guidry used his extrapolation methodology to determine that homes in the downtown Rockport area with harbor views sold for approximately 30 percent more than comparable properties in the general vicinity of Long Beach. He based this conclusion on 3 examples of paired sales of properties that he believed were comparable to each other except for their location, but not comparable to the subject property.

Mr. Guidry also performed a similar paired-sales analysis to arrive at a lot size adjustment using properties in Rockport, Plum Island, Essex, and Gloucester. Once again, the properties he compared in his paired-sales analysis were comparable to each other except for one feature – in this case, lot size – but not comparable to the subject property.

Having determined his adjustment factors, Mr. Guidry selected properties he felt were sufficiently comparable to the subject property. He selected 5 properties for his fiscal year 2014 analysis, of which 2 were in Rockport, 2 on Plum Island and 1 in Ipswich. For fiscal year 2015, he used 7 comparable properties, of which 4 were the same as ones he used for fiscal year 2014; he eliminated 1 of the Plum Island properties used in fiscal year 2014 and added a different Plum Island property as well as 2 additional Rockport properties.

Once he selected his comparable properties, he applied his adjustments to determine adjusted sale prices and to arrive at his opinion of value for the subject property. The largest adjustments he made were for the location and lot-size factors that he identified in his paired-sales analysis. For example, he adjusted the \$725,000 sale of his comparable two, located in downtown Rockport, downward by \$217,500 or 30 percent, for location. Similarly, he adjusted the \$775,000 sale of his comparable four, located about a mile north of the subject property, downward by \$230,700, or approximately 30 percent, for lot size.

After making his adjustments, Mr. Guidry arrived at final opinions of value for the subject property of \$530,000 for fiscal year 2014 and \$535,000 for fiscal year 2015.

II. THE ASSESSORS' CASE

The assessors offered the testimony and appraisal report of Mark F. Tyburski, whom the Board qualified as an expert witness. Mr. Tyburski presented 4 comparable properties for his analysis of the subject property; 3 of his comparable properties were located in downtown Rockport, with the remaining property located in an "upscale residential neighborhood" in Rockport. After making a 10 percent downward adjustment for location and various other adjustments to the sale prices of his comparable properties, Mr. Tyburski offered his opinion that the fair market value of the subject property was \$670,000 for fiscal year 2014 and \$700,000 for fiscal year 2015.

As additional support for his opinion, Mr. Tyburski reviewed sales of properties on Long Beach. As had Mr. Guidry, Mr. Tyburski recognized that these sales were not of the fee simple interest in the cottages, but only the leasehold interest in the lots. His review of sales on Long Beach resulted in prices per square foot of gross living area similar to those found by Mr. Guidry: approximately \$550 per square foot during the relevant time period.

III. THE BOARD'S CONCLUSIONS

The parties agree, and the Board finds and rules, that G.L. c. 59, § 2B requires that the subject property be "valued, classified, assessed and taxed" as if the appellant owned the subject property in fee, even though the Town owns the subject parcel. Both parties' experts used a comparable sales approach using sales more or less distant from the Long Beach neighborhood, but each reported data regarding sales in the Long

Beach neighborhood itself. Neither party, however, relied directly on the Long Beach sales data in rendering an opinion of value.

The Board finds and rules that this data is relevant to the issue of valuation in these appeals because it helps to establish a *minimum* value of the fee simple interest in the subject property by determining the value of a lesser interest -- the leased fee interest -- for the fiscal years at issue. If the value of the leased fee interest is equal to or greater than the assessed value, the appellant cannot successfully claim that the more valuable fee simple interest is less than the assessed value.

Both parties' experts reported similar Long Beach sales data: Mr. Guidry reported sales going from \$550 to \$500 per square foot of gross living area for the fiscal years at issue, while Mr. Tyburski reported approximately \$550 per square foot of gross living area for the period he reviewed. Mr. Guidry also reported prices per square foot of land area going from \$175 to \$150 dollars for fiscal years 2014 and 2015 respectively.

The subject property is assessed at \$678,700 for fiscal year 2014 and \$677,300 for fiscal year 2015. Dividing these assessed values by the subject property's gross living area of 1,818 square feet results in assessed values per square foot of gross living area of approximately \$373 for both fiscal years at issue, well below the \$500 to \$550 per square foot sale prices for leased fee interests of other Long Beach properties during the relevant time period.

The Board has previously recognized that the value of the leased fee interest is only a portion of the value of the fee simple interest. On facts substantially similar to the facts of the present appeals, the Board rejected the taxpayer's argument that the value of the leased fee constitutes the taxable value under § 2B:

[B]y basing their valuation approach on sales by other Conomo Point tenants, the Sisks are valuing only the leasehold interest in the Parcel and not the fee simple interest. The other Conomo Point tenants could only sell, in addition to their buildings, their rights under their leases with the town. They did not, and could not, sell the town's underlying fee or reversionary interest in the Parcel. **Accordingly, a valuation based on these sales values only a portion of the taxable interests in the Parcel** and is not consistent with the § 2B requirement that the property be valued, assessed and taxed as if it were owned in fee.

Sisk v. Assessors of Essex, Mass. ATB Findings of Fact and Reports 1997-528, 533-34, *aff'd*, 426 Mass. 651 (1998) (emphasis added). Although the Long Beach sales data reported by the parties' experts in the present appeals can be used to value only a portion of the appellant's interest in the subject property, the value of that portion exceeds the assessed value and therefore no abatement is due.

In addition, the Board finds that neither expert's comparable-sales analysis provided credible evidence of value in these appeals. Although Mr. Guidry gave a

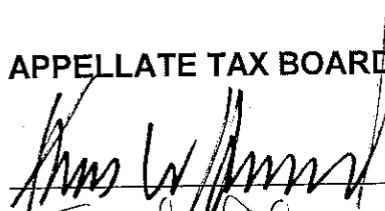

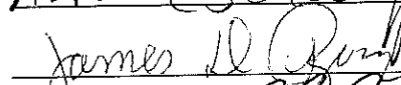
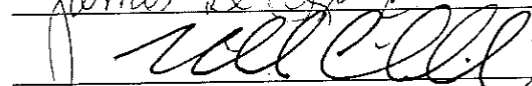
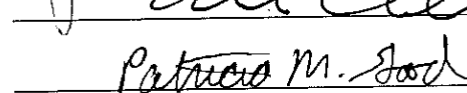
thorough and detailed explanation of his extrapolation methodology, the Board finds it speculative and without adequate foundation. Using properties that were not comparable to the subject property required the Board to accept, with little support in the record, that the paired-sales properties were comparable to each other except for the feature to be valued. His adjustments were also excessive, particularly his lot size and location adjustments. The downtown Rockport sales that he reduced by 30 percent for location were simply not comparable to the subject property's beachfront location. Regarding his lot size adjustments, Mr. Guidry made significant adjustments to sale prices of properties with larger lots than the subject property, although he conceded that the lots he examined could not be further developed. The Board finds that these adjustments were not justified, particularly because the primary element of value in the subject property is its beach location, not its size.

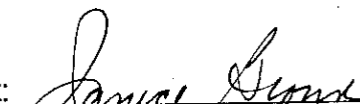
Further, despite his recognition that direct access to a sandy beach, the protection provided by the seawall, and the limited public access to Long Beach all were positive attributes to the subject property, Mr. Guidry's comparable sales adjustment grids show no positive adjustments for these factors. Although he mentioned these factors in a general way in his report, there is no indication that he adequately considered their positive impact on the value of the subject property. Accordingly, the Board finds that his analysis fails to adequately account for these unique contributors to the value of the subject property.

Regarding Mr. Tyburski's analysis, the Board finds that his three downtown harborview properties and one oceanview property are not comparable to the subject property. There is no indication that any of his comparable properties had the benefit of direct access to a sandy beach or the other amenities that made the subject property unique.

On the basis of all the evidence of record, the Board finds and rules that the appellant failed to meet its burden of proving that the assessed value of the subject property exceeded its fair cash value. Accordingly, the decisions are for the appellee.

APPELLATE TAX BOARD

<u></u>	Chairman
<u></u>	Commissioner
<u></u>	Commissioner
<u></u>	Commissioner
<u></u>	Commissioner

Attest: 
Asst. Clerk of the Board

Date: **JAN 17 2017**
(Seal)

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.