COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DEREK J. & MARCIA J. PREGENT v. BOARD OF ASSESSORS OF THE CITY OF GLOUCESTER

Docket No. F331961

Promulgated:
March 26, 2019

This is an appeal under the formal procedure[1] 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 City of Gloucester ("assessors" or "appellee") to abate a tax on a parcel of real estate located in the City of Gloucester, owned by Derek J. Pregent and Marcia J. Pregent ("appellants") for fiscal year 2016 ("fiscal year at issue").

Commissioner Rose ("Presiding Commissioner") heard this 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 a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Marcia J. Pregent, pro se, for the appellants.

Krishna Basu, Esq. for the appellee.

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[1] The appellants originally filed under the informal procedure. Subsequently, on September 22, 2016, pursuant to G.L. c. 58A, § 7A, the appellee elected to transfer the appeal to the formal procedure.

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 relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 20,240-square-foot parcel of real estate improved with a foundation located at 28 Way Road in the City of Gloucester ("subject property"). Relevant jurisdictional information is summarized in the following table:

Valuation	Tax rate	Tax amount	Taxes timely paid Y/N	Abatement application filed	Abatement application deemed denied by assessors	Petition filed
$563,000	$13.61 per $1,000	$7,725.44[2]	Y	01/25/2016	04/25/2016	07/26/2016[3]

On the basis of these facts, the Presiding Commissioner found and ruled that the Appellate Tax Board ("Board") had jurisdiction to hear and decide the instant appeal.

At the hearing of this appeal, Mrs. Pregent testified and presented documentary evidence on behalf of the appellants. Mrs.

[2] This amount includes an additional Community Preservation Act ("CPA") surcharge of 1 percent minus a residential exemption on the first $100,000 of value.

[3] The appellee sent a notice to the appellants indicating that their abatement application had been deemed denied on April 26, 2016. However, the abatement application was actually deemed denied on April 25, 2016. *See* G.L. c. 59, § 64. Therefore, the denial notice is invalid, and the appellants thus had additional time in which to file their petition. ***Stagg Chevrolet, Inc. v. Board of Water Comm'rs***, 68 Mass. App. Ct. 120, 126 (2007) (ruling that the taxpayer is allowed a reasonable time to appeal a defective notice).

Pregent testified that the subject property was subdivided in 2003 from a lot owned by her father. Access to the subject property is gained by an easement from an abutting parcel, which is owned by an unrelated third party.

The appellants' main contention was that the land was overvalued. Mrs. Pregent acknowledged the presence on the subject property of a foundation for a single-family, Colonial-style home with an in-law apartment, but she characterized the subject property as unimproved as of the relevant assessment date. She testified and submitted photographs to demonstrate that drainage and ledge issues had hindered the development of the lot. There were no utilities or sewerage connections for the single-family home as of the assessment date.

The subject property is adjacent to Bass Rock golf course. Mrs. Pregent testified that being adjacent to a golf course was a nuisance, and she further testified and submitted photographs to show that the subject property's ocean view was limited by the surrounding trees.

In further support of the appellants' overvaluation claim, Mrs. Pregent provided a comparable-assessment analysis of twelve purportedly comparable parcels. Two of her purportedly comparable properties were vacant and the remaining ten were improved with a residence. Mrs. Pregent focused exclusively on each parcel's land value. Although her purportedly comparable

properties differed in size, location, water-view factors, and sale dates, she made no adjustments to reflect these differences.

The appellee offered its case principally through the testimony of Fitz O. Lufkin III, a Certified General Appraiser, whom the Board qualified as an expert witness in the area of residential property valuation ("appellee's appraiser"). The appellee's appraiser provided a comparable-sales analysis consisting of four sales in the subject property's area. The Board found that his comparable at 10 Way Road was most instructive. This property is an approximately 40,000-square-foot parcel improved with a single-family, Colonial-style home. It sold on November 11, 2014, for $525,000. Mrs. Pregent had also relied upon 10 Way Road for her comparable-assessment analysis, focusing solely on its land assessment. At the time of its sale, 10 Way Road was improved with an old single-family home and detached garage. The home was subsequently rebuilt - what the appellee's appraiser characterized as "a complete gut renovation" - at a cost of $602,500. The appellee's appraiser thus considered the 2014 transaction to be a land sale. He started with the $525,000 sales price and then adjusted downward for the property's larger lot size and slightly superior distant ocean views. Based on this analysis, his opinion of value for the subject property was $515,000.

During his testimony, however, the appellee's appraiser was made aware of the fact that the septic system of the abutting parcel owned by Mrs. Pregent's father is situated on the subject property. Upon this realization, he opined that he would reduce his original opinion of value by 5 percent.

After considering all the evidence, the Presiding Commissioner ultimately found that the record supported a reduction in value for the subject property. The Presiding Commissioner was most persuaded by the comparable property at 10 Way Road, located on the same street as the subject property and relied on by both parties. The Presiding Commissioner found that the appellee's appraiser provided credible adjustments to arrive at his original opinion of the subject property's fair market value of $515,000 and agreed that the value should be further reduced by approximately 5 percent to account for the presence of the neighboring parcel's septic system. Therefore, the Presiding Commissioner determined that the fair market value of the subject property for the fiscal year at issue was $490,000.

Accordingly, the Presiding Commissioner issued a decision for the appellants, granting abatement in the amount of $1,003.46.[4]

[4] This amount includes the applicable portion of the CPA surcharge.

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 if both of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellants have the burden of proving that the subject property has a lower fair market value than the value assessed. "'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 taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

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 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). 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). When comparable sales are used, however, allowances must be made for various factors that would otherwise cause disparities in the comparable-sales properties' sales prices. *See* ***Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke,*** Mass. ATB Findings of Fact and Reports 1998-1072, 1082 (and the cases cited therein); APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 388 (14th ed. 2013) ("After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any differences.").

In the instant appeal, the appellants presented assessment information for twelve purportedly comparable properties, only two of which were vacant; Mrs. Pregent focused solely on the land portions of those assessments. She did not make adjustments to her purportedly comparable properties for crucial differences that would affect value, including but not limited to size, location, and timing of sale.

However, the appellee's appraiser presented cogent, credible evidence of a comparable-sale property, 10 Way Road,

that, when adjusted for size as well as the subject property's septic system, supported a reduction of the subject property's assessed value to $490,000. *See* ***General Electric***, 393 Mass. at 606 (ruling that the substantial evidence upon which the Board must rely to support its conclusion includes the entire record).

In reaching its decision in this appeal, the Board was not required to believe the testimony of any particular witness or adopt any particular method of valuation that a witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981); ***Assessors of Lynnfield v. New England Oyster House, Inc.***, 362 Mass. 696, 701-02 (1972). "The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the board." ***Cummington School of the Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977).

The Presiding Commissioner found and ruled that the totality of the evidence supported the appellants' claim that the subject property's assessment exceeded its fair cash value for the fiscal year at issue. Accordingly, the Presiding

Commissioner decided this appeal for the appellants and ordered an abatement of $1,003.46.[5]

THE APPELLATE TAX BOARD

By: ______________________
James D. Rose, Commissioner

A true copy,

Attest: ______________________
Clerk of the Board

[5] This amount includes the applicable portion of the CPA surcharge.