**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**RICHARD J. MCDONALD, TRUSTEE,    v.    BOARD OF ASSESSORS OF**

**RICHARD J. MCDONALD     THE TOWN OF PHILLIPSTON**

**REVOCABLE LIVING TRUST, and**

**ELIZABETH A. MCDONALD, TRUSTEE,**

**ELIZABETH A. MCDONALD**

**REVOCABLE LIVING TRUST**

Docket No. F320148        Promulgated:

                 December 2, 2014

This is an appeal filed under the formal procedure, 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 Town of Phillipston (“appellee” or “assessors”) to abate taxes on certain real estate in Phillipston, owned by and assessed to Richard J. McDonald, Trustee of the Richard J. McDonald Revocable Living Trust and Elizabeth A. McDonald, Trustee of the Elizabeth A. McDonald Revocable Living Trust (“appellants”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2013 (“fiscal year at issue”).

Commissioner Rose (“Presiding Commissioner”) heard this appeal and, in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20, issued a single-member decision for the appellee.

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

*Ann E. Meilus,* Esq. for the appellants.

*Reginald Haughton,* Chairman of the Board of Assessors, for the appellee.

**Findings of Fact and Report**

1. **Introduction and Jurisdiction**

On the basis of all of the evidence, including the testimony and documentary exhibits entered into the record, the Presiding Commissioner found the following.

On January 1, 2012, the appellants were the assessed owners of a 3.20-acre parcel of land identified on the appellee’s Map 55 as Block 0, Parcel 18 with an address of 28 Lakeside Drive in the Town of Phillipston (“subject property”). For the fiscal year at issue, the assessors valued the subject property at $287,900 and assessed a tax thereon, at the rate of $15.56 per thousand, in the total amount of $4,567.43.[[1]](#footnote-1) The appellants paid the tax due without incurring interest. On January 22, 2013, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors, which was deemed denied on April 22, 2013. In accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed their petition with the Appellate Tax Board (“Board”) on June 14, 2013. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the instant appeal.

The subject property is a 3.2-acre waterfront property, situated on Queen Lake, which is improved with a bungalow-style residence (“subject home”). The subject home contains 739 square feet of living area, 528 feet on the first floor and an additional 211 square feet in the finished attic expansion, and is comprised of six rooms, including two bedrooms, as well as one full bathroom. The subject home is a seasonal dwelling and lacks a central heating system. The assessors classified the subject home’s bathroom and kitchen as being “old style,” and they rated the subject home as being in overall “average +10” condition. Amenities include skylights, a 120-square-foot screened-in finished porch, a 326-square-foot deck off of the first floor, a 240-square-foot detached wooden deck, a 64-square-foot storage shed, and an outside fireplace.

The appellants presented their case-in-chief through the testimony and appraisal report of Philip R. Pineo, whom the Presiding Commissioner qualified as an expert in the area of residential real estate valuation, and the testimony of appellant, Richard J. McDonald.

Mr. Pineo presented his appraisal report, in which he developed a sales-comparison approach to value the subject property. Mr. Pineo selected four purportedly comparable sales, which he claimed were all waterfront properties. Mr. Pineo’s analysis is summarized in the table below:

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Comparable 1**  4 Pine Point, Phillipston | **Adjustments** | **Comparable 2**  115 Secret Lake Rd  Phillipston | **Adjustments** |
| **Sale date**  **Sale price** | 08/26/2011  $200,000 |  | 10/14/2011  $275,000 |  |
| **Location** | 0.51 miles  waterfront/above avg. |  | 3.78 miles  waterfront/avg. | $13,750 |
| **Land Size** | 0.26 acres | $ 7,350 | 0.77 acres | $ 6,075 |
| **Style of home/**  **Condition** | Bungalow/  Avg. | $10,000 | Cape/  Avg. |  |
| **Gross living area**  **Rooms/bed/bath** | 850 sf  5/3/1.0 | ($ 1,450)  ($ 2,500) | 1,594 sf  5/2/1.1 | ($20,050)  ($ 3,500) |
| **Basement** | Crawlspace |  | Full | ($ 5,000) |
| **Rooms below grade** | None |  | 2 finished rooms | ($ 5,000) |
| **Functional utility** | Seasonal |  | Year-round | ($13,750) |
| **Heating/cooling** | No central heating or cooling |  | Forced hot water/  No central air | ($10,000) |
| **Garage/carport** | None |  | 2-car detached garage | ($10,000) |
| **Porch/patio/deck**  **Fireplaces** | Deck/  Woodstove on hearth | $ 5,000 | Porch/patio/deck  2 fireplaces | $ 2,000  ($ 4,000) |
| **Outdoor amenities** | Shed | $ 1,000 | Shed | $ 1,000 |
| **Net adjustments** |  | $19,400 |  | ($48,475) |
| **Adjusted sale price** |  | $219,400 |  | $226,525 |

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  | **Comparable 3**  34 Shore Dr., Templeton | **Adjustments** | **Comparable 4**  36 Spa Road, Phillipston | **Adjustments** |
| **Sale date**  **Sale price** | 10/14/2011  $234,900 |  | 06/22/2009  $250,000 |  |
| **Location** | 3.55 miles  waterfront/avg. |  | 0.86 miles  waterfront/above avg. |  |
| **Land Size** | 0.25 acres | $7,375 | 0.34 acres | $ 7,150 |
| **Style of home/**  **Condition** | Contemporary/  Avg. | $11,745 | Cottage/  Good | ($12,500) |
| **Gross living area**  **Rooms/bed/bath** | 1,212 sf  5/2/2.0 | ($10,500)  ($ 5,000) | 1,416 sf  7/4/1.0 | ($15,600)  ($ 5,000) |
| **Basement** | Full | ($ 5,000) | Crawlspace |  |
| **Rooms below grade** | None |  | none |  |
| **Functional utility** | Year-round | ($11,745) | Seasonal |  |
| **Heating/cooling** | Forced hot-water heating/ no central cooling | ($10,000) | No central heating or cooling |  |
| **Garage/carport** | 1-car garage under | ($ 1,500) | None |  |
| **Porch/patio/deck**  **Fireplaces** | Deck/  1 fireplace | $ 5,000  ($ 1,000) | Screened porch/  1 fireplace | $ 4,000  ($ 1,000) |
| **Outdoor amenities** | Shed | $ 1,000 | Boathouse, shed |  |
| **Net adjustments** |  | ($19,625) |  | ($22,950) |
| **Adjusted sale price** |  | $215,275 |  | $227,050 |

Mr. Pineo’s total net adjustments to his comparable-sale properties ranged from $19,400 to $48,475 and they yielded adjusted sale prices ranging from $215,275 to $227,050. Mr. Pineo arrived at a fair market value of $222,000 for the subject property.

Next, Mr. McDonald testified. He contended that the subject property was overvalued because the land contains utility easements for poles, electric cables and telephone wires, as well as rights of way, which provide access to nearby cottages, along two sides of the property. He claimed that, because of these restrictions, the subject property cannot be further built upon, as setback requirements cannot be satisfied for future improvements.

The appellee presented its case-in-chief through the testimony of Reginald Haughton, the Chairman of the appellee. Mr. Haughton contended that the comparable-sale properties selected by Mr. Pineo for his analysis were not sufficiently comparable to the subject property, because they were located at least a half a mile away from the lake and were thus not waterfront properties like the subject property, and because they contained less land than the subject property. Mr. Haughton also presented a comparable-sales analysis and a comparable-assessment analysis, both supported with the property record cards for purportedly comparable properties from Phillipston.

The Presiding Commissioner found that the purportedly comparable properties used by Mr. Pineo in his comparable-sales assessment were not sufficiently similar to the subject property to provide for a meaningful comparison, primarily because they were situated far from the subject property and not in as desirable a location, directly on the lakefront. The Presiding Commissioner also reviewed the property record cards for the comparable-sale properties submitted by the appellee and found that properties located directly on a lake had sold for prices that were comparable with the subject assessment, after appropriate adjustments. For example, 3 Scout Rock Road, a 0.58-acre waterfront property located on Queen Lake improved with a 1,299-square-foot seasonal residence with a wood-stove heating system, sold in August of 2008 for $250,000, while 58 Spa Road, also on Queen Lake, a 1.44-acre waterfront property improved with a 2,086-square-foot seasonal residence with forced-air duct heating, sold in June of 2009 for $330,000. The Presiding Commissioner found that these sales, with appropriate adjustments for differences with the subject property, including but not limited to size and central heating, supported the subject assessment.

The Presiding Commissioner further found that the appellants’ contentions concerning the value of the subject property’s land – that it contained large amount of ledge and easements - failed to establish conclusively whether the subject property was unbuildable, and moreover, failed to address the issue of whether the subject property’s overall assessment was excessive.

The Presiding Commissioner thus found and ruled that the appellants failed to meet their burden of proving that the subject assessment did not reflect the fair market value of the subject property. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

**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 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 appellants have the burden of proving that property has a lower value than that 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)). The taxpayer may sustain this burden by introducing 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) (citing ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization; sales comparison; and cost reproduction. ***Correia v. New Bedford Redevelopment Authority,*** 375 Mass. 360, 362 (1978). “[S]ales of property usually furnish strong evidence of market value, provided they are arm’s-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller.” ***Foxboro Associates v. Assessors of Foxborough,*** 385 Mass. 679, 682 (1982). In addition, “[r]eliable comparable sales data will ordinarily trump comparable assessment information for purposes of finding a property’s fair cash value.” ***Graham v. Assessors of West Tisbury,*** Mass. ATB Findings of Fact and Reports 2007-321, 403, *aff’d*, 73 Mass. App. Ct. 1107 (2008).

The Presiding Commissioner found that the purportedly comparable properties used by Mr. Pineo in his comparable-sales assessment were not sufficiently similar to the subject property to provide for a meaningful comparison, primarily because they were not lakefront properties in as desirable a location as the subject property. The Presiding Commissioner recognized the important distinction for valuation purposes between waterfront properties and those that were merely waterview. *See, e.g.*, ***Ward Brothers Realty Trust v. Assessors of Hingham***, Mass. ATB Findings of Fact and Reports, 2012-515, 523. The Presiding Commissioner thus found and ruled that the appellants had failed to introduce evidence of of sufficiently comparable properties for their comparable-sales analysis.

Furthermore, a taxpayer “does not conclusively establish a right to an abatement merely by showing that his land or building is overvalued. ‘The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.’” ***Hinds v. Assessors of Manchester-by-the-Sea***, Mass. ATB Findings of Fact and Reports 2006-771, 778 (quoting ***Assessors of Brookline v. Prudential Insurance, Co.***, 310 Mass. 300, 317 (1941)). In abatement proceedings, “the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive.” ***Massachusetts General Hospital v. Belmont***, 238 Mass. 396, 403 (1921); *see also* ***Buckley v. Assessors of Duxbury***, Mass. ATB Findings of Fact and Reports 1990-110, 119; ***Jernegan v. Assessors of Duxbury***, Mass. ATB Findings of Fact and Reports 1990-39, 49.

In the present appeal, the appellants’ contention related to the supposed impact of the ledge and easements on the value of the subject property’s land was not sufficient, credible evidence showing that the overall assessment of the subject property exceeded its fair cash value as of the relevant assessment date.

Based on the evidence presented, the Board found and ruled that the appellants did not meet their burden of proving that the subject property’s overall assessment was excessive. Accordingly, the Board issued a decision for the appellee in this appeal.

**APPELLATE TAX BOARD**

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

**James D. Rose, Commissioner**

**A true copy,**

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

**Clerk of the Board**

1. This amount includes a Community Preservation Act (“CPA”) surcharge. [↑](#footnote-ref-1)