**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**ROSE BOSTON, LLC   v.     BOARD OF ASSESSORS OF**

**THE TOWN OF BROOKLINE**

Docket No. F315497     Promulgated:

December 4, 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 Brookline (“assessors” or “appellee”) to abate taxes on certain real estate located in Brookline that were assessed under G.L. c. 59, §§ 11 and 38 for fiscal year 2012.

Commissioner Mulhern heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by Rose Boston LLC (“appellant”)[[1]](#footnote-1) under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Matthew Haney, manager,* for the appellant.

*Rachid Belhocine, assessor,* for the appellee.

**FINDINGS OF FACT AND REPORT**

On the basis of testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

The property at issue (“subject property”), which was located at 172 Fuller Street in Brookline, consisted of a 2,882 square foot lot improved with a dilapidated two-family dwelling that contained 2,734 square feet of living area. The assessors initially valued the subject property at $798,500 and assessed a tax in the amount of $9,102.90, which the appellant paid without incurring interest. The appellant timely filed an Application for Abatement with the assessors on January 25, 2012. On April 24, 2012, the assessors, having viewed the subject property and as a result downgraded its dwelling’s condition rating to “poor,” reduced the property’s assessed value to $508,500 and granted an abatement of $3,306. On May 9, 2012, the appellant seasonably filed a Petition Under Formal Procedure with the Board seeking a further reduction in the subject property’s assessed value and a corresponding abatement. On the basis of the preceding facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant asserted that the subject property was substantially overvalued for fiscal year 2012. In support of this assertion, the appellant emphasized that the dwelling situated on the subject property had been condemned and deemed uninhabitable by the Town of Brookline. Consequently, the appellant viewed the dwelling as valueless. The appellant failed, however, to provide sufficient evidence to demonstrate that the dwelling was without value or that the assessors had not adequately accounted for its state of disrepair when they lowered its condition rating and the subject property’s assessed value. Moreover, during the hearing of the appeal, the appellant’s manager, who was the only person to testify on the appellant’s behalf, conceded that he did not know the extent of the damage to the dwelling on the relevant assessment date. This lack of knowledge undermined the appellant’s assertion that the dwelling had no value.

The appellant also offered a comparable-sales analysis in the form of two Multiple Listing Service (“MLS”) listings for properties located in Brookline. The first property consisted of a 2,732-square-foot lot improved with a 900-square-foot barn that was used to park vehicles. The second property was an undeveloped, wooded lot of 7,499 square feet that was marketed as appropriate for construction of a single-family home. The Board found that these listings were not probative of the subject property’s fair cash value. As a threshold matter, the listings were expired and did not reflect a sale date or price for either property. Further, and more importantly, the properties, one of which was an empty lot and the other improved only with a barn, did not share fundamental similarities with the subject property, which was improved with a two-family dwelling. Based on these facts, the Board found that the properties were not comparable to the subject property and were not suitable for use in a comparable-sales analysis.

On the basis of the foregoing, the Board found and ruled that the appellant failed to meet its burden of demonstrating that the subject property’s assessed value exceeded its fair cash value for fiscal year 2012 and 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 appellant has the burden of proving that the subject property’s fair cash value was lower than its assessed value. “‘The burden of proof is upon the petitioner to make out [his] 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 the Board, taxpayers “‘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)).

“Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue.” ***Giard v. Assessors of Colrain***, Mass. ATB Findings of Fact and Reports 2009-115, 123 (citing ***McCabe v. Assessors of Chelsea,*** 265 Mass. 494, 496 (1929)). Properties are “comparable” to the subject property when they share "fundamental similarities" with the subject property, including location, size, and date of sale. ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004).

The appellant’s claim of overvaluation rested on the assertion that the dwelling situated on the subject property had no value and comparable-sales evidence consisting of two expired MLS property listings. However, neither the appellant’s assertion nor the property listings exposed flaws in the assessors’ valuation or provided affirmative evidence of the subject property’s fair cash value. More specifically, while the dwelling was in poor condition, the appellant failed to establish that it was valueless and acknowledged an inability to quantify existing damage. The MLS listings were just that, and not evidence of sales. Finally, the properties offered for comparison with the subject property were a vacant lot and one improved with a barn used for parking, neither of which the Board found was comparable to the subject property.

For all of the cited reasons, the Board found and ruled that the appellant failed to sustain its burden of proving that the subject property’s fair cash value was lower that its assessed value for fiscal year 2012. Accordingly, the Board issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

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

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

**A true copy,**

**Attest: \_**

**Clerk of the Board**

1. As of January 1, 2011, the relevant assessment date for fiscal year 2012, James Coffey was the assessed owner of the property at issue in this appeal and the appellant held a mortgage on the property. Title to the property was subsequently transferred to Matthew Haney as Trustee of the FHS Realty Trust via a foreclosure deed. [↑](#footnote-ref-1)