**COMMONWEALTH OF MASSACHUSETTS**

 **APPELLATE TAX BOARD**

**JOSHUA A. ROSE, T/E**  **v. BOARD OF ASSESSORS OF**

 **THE TOWN OF WAYLAND**

Docket Nos.: F325938, F331360, Promulgated:

           F332828 July 19, 2018

 These are appeals filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the failure of the Board of Assessors of the Town of Wayland (“appellee” or “assessors”) to abate taxes on certain real estate in Wayland owned by and assessed to Joshua A. Rose, T/E (“appellant” or “Mr. Rose”) under G.L. c. 59, §§ 11 and 38, for fiscal years 2015, 2016, and 2017 (“fiscal years at issue”).

Commissioner Good heard these appeals and was joined in her decisions for the appellee by Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski.

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

 *Mark F. Murphy,* Esq.for the appellant.

*Ellen M. Brideau,* Director of Assessing*,* for the appellee.

**FINDINGS OF FACT AND REPORT**

 Based on the testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board (“Board”) made the following findings of fact.

 On January 1, 2014, January 1, 2015, and January 1, 2016, the relevant dates of valuation for the fiscal years at issue, the appellant was the assessed owner of a 0.44-acre parcel of land improved with a single-family dwelling, located at 46 Cedar Crest Road in Wayland (“subject property”). For fiscal year 2015, the assessors valued the subject property at $593,220, and assessed a tax thereon, at the rate of $18.39 per thousand, in the total amount of $11,072.58, inclusive of a Community Preservation Act (“CPA”) surcharge. For fiscal year 2016, the assessors valued the subject property at $613,100, and assessed a tax thereon, at the rate of $17.34 per thousand, in the total amount of $10,790.62, inclusive of a CPA surcharge. For fiscal year 2017, the assessors valued the subject property at $612,900, and assessed a tax thereon, at the rate of $18.14 per thousand, in the total amount of $11,284.78, inclusive of a CPA surcharge.

 The following table contains the jurisdictional information relevant to these appeals.

|  |  |  |  |
| --- | --- | --- | --- |
| **Fiscal Year** | **Abatement Application Filed** | **Abatement Application Denied or Deemed Denied** | **Appeal Filed with Board** |
| **2015** | **1/26/15** | **2/10/15** | **4/23/15** |
| **2016** | **1/14/16** | **4/14/16** | **7/8/16** |
| **2017** | **1/13/17** | **2/27/17** | **5/18/17** |

 On the basis of the foregoing facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

 The appellant, who testified at the hearing of these appeals and whom the Board found to be credible, stated that he purchased the subject property in 2005. At that time, it was a small, ranch-style home with two bedrooms. In 2009, the appellant sought to build an addition to the subject property. However, because applicable Massachusetts Department of Environmental Protection regulations required 10,000 square feet of land per bedroom for septic system purposes, and the subject property had approximately 23,000 square feet of land, the addition would only be approved if it did not include additional bedrooms. Therefore, in order to gain approval for the expansion of the home, the appellant granted a deed restriction to the Town of Wayland, limiting the subject property to two bedrooms. A copy of that document, signed by the appellant on March 7, 2009 and recorded at the Middlesex Registry of Deeds two days later, was entered into the record.

 The appellant then proceeded with his plans for the expansion of the subject property. The addition, which was completed in 2009, added on to the existing home a three-car garage with living space above, transforming the home from a 961-square-foot, ranch-style dwelling to a 2,460-square-foot, contemporary-style dwelling.

Copies of the subject property’s plot plan and architect’s floor plans for the addition were entered into the record. According to the floor plans, the first floor of the subject dwelling would contain an eat-in kitchen, dining room, play room, and living room, as well as a bathroom, mudroom, and foyer. The second floor, according to the floor plans, would have three rooms and two bathrooms. The master bedroom had an en suite bathroom, while the other two rooms shared a hallway bathroom. These other two rooms were approximately the same size and each had a walk-in closet. On the floor plans, one of the rooms was labeled as a bedroom, while the other room was labeled as an office. However, a copy of the building permit issued for the subject property’s addition, which was entered into the record, referenced three bedrooms as part of the project, and made no mention of an office. Similarly, the portion of the floor plans specifying the finishes for each room mentioned a master bedroom and other bedrooms, but made no mention of an office.

 Mr. Rose testified that around 2014, he began to question the subject property’s assessed value. He examined the property record card for the subject property and noticed errors, such as listing a full basement for the subject property, when it had only a slab foundation, and the inclusion of a non-existent patio. Additionally, there was a typographical error on the property record card that indicated the subject property had 31 bathrooms, instead of three.

 Mr. Rose brought these errors to the attention of the assessors. Ellen M. Brideau, the Director of Assessing, who testified on behalf of the assessors and whom the Board found to be credible, testified that following Mr. Rose’s inquiries, the assessors made a site visit to inspect the subject property and attempt to verify the information on the property record card. Ms. Brideau explained that after the inspection, the assessors agreed that the property record card had errors as to the patio, basement, and the number of bathrooms, and they updated the property record card to reflect the accurate information. However, the assessors made additional changes to the property record card after discovering that the attributes of the subject property following the addition were not accurately reflected on the property record card.

 For example, Ms. Brideau explained that the assessors increased the grade of the subject property, from a two to a four, to reflect the impact of the addition on the overall condition of the home. Similarly, the assessors changed the style of the subject property from a ranch to a contemporary, as that was a more accurate reflection of its style following the addition. Lastly, Ms. Brideau explained that the assessor conducting the inspection observed there to be four bedrooms in the subject property, being used as such, and accordingly, she adjusted the property record card to reflect four bedrooms instead of the listed two bedrooms.

 Mr. Rose testified that, although the errors that he brought to the assessors’ attention were corrected on the property record card, he continued to disagree with the assessed value of the subject property. Specifically, he contended that it was incorrect for the assessors to value the subject property as a four-bedroom home, when, per the deed restriction, it was legally restricted to two bedrooms. It was the appellant’s opinion that this error on the part of the assessors caused the subject property to be overvalued. The appellant did not offer evidence of comparable market sales or assessment data.

 The assessors for their part offered extensive documentary evidence into the record, along with the testimony of Ms. Brideau. Ms. Brideau explained that the valuation methodology used by the assessors does not take into consideration bedroom count, but is instead based on a property’s total finished living area.

Further, the assessors offered evidence of timely, arm’s-length property sales in Wayland during the relevant time period. In particular, the assessors introduced evidence regarding sales of two properties with the same deed restriction as the subject property, and both of them were listed in the marketing information as three-bedroom homes, with the deed restriction listed as a disclosure item. The first property, Three Chestnut Street in Wayland, was a 2,100-square-foot home on a 0.13-acre lot. It was listed as having three bedrooms, two and one-half bathrooms, and a one-car garage. Despite having less finished living area, a smaller lot size, and two fewer garage bays than the subject property, that property sold for $610,000 in December of 2014, a price that was more than or close to each of the assessed values at issue. The second property, located at 23 Wallace Road, was a 3,383-square-foot, contemporary-style dwelling situated on a 0.92-acre lot. While it was larger in lot size and finished living area than the subject property, it had only two bathrooms in comparison to the subject property’s three bathrooms, and it had no garage. That property sold for $630,000 in July of 2014, which was more than each of the assessed values at issue.

The assessors additionally offered a spreadsheet showing 17 sales of contemporary-style homes in Wayland that sold between August of 2013 and June of 2016. The sale prices of those properties ranged from $450,000 to $1,895,000. Of those properties, only three sold for less than the subject property’s assessed values, even though the subject property was in the middle of the range for size.

Lastly, to dispel the notion that the fair market value of the subject property would have been lower than its assessed value for each of the fiscal years at issue if it had been treated as a two-bedroom home, the assessors offered sale and assessment data for 31 two-bedroom homes in Wayland that sold between August of 2013 and June of 2016. The sale prices of those properties ranged from $200,000 to $849,000; however, among those properties, only a single home had more finished living area than the subject property. The four properties closest to the subject property in finished living area had between 1,829 and 2,831 square feet of living area, and they sold for between $553,000 to $849,000, with an average sale price of $725,750.

Based on all of the evidence, the Board found that the appellant failed to meet his burden of proving that the subject property’s assessed value exceeded its fair market value for each of the fiscal years at issue. The relevant inquiry here was not how many bedrooms the subject property had, but what price it could have fetched in an arm’s-length transaction. To that end, the Board found that while the appellant offered no evidence of timely, comparable market sales, the assessors offered substantial and persuasive evidence of fair cash value that provided solid support for the assessments at issue. After crediting that evidence, as well as the presumptive validity of the assessments, the Board found that the appellant failed to meet his burden of demonstrating overvaluation. Accordingly, the Board issued decisions for the appellee in these appeals.

**OPINION**

 Assessors must assess real estate at its fair cash value as of the first day of January of the year preceding the fiscal year at issue. G.L. c. 59, §§ 11 and 38. Fair cash value is the price upon which a willing buyer and a willing seller would agree if both are fully informed and neither is under compulsion. ***Boston Gas Co. v. Assessors of Boston*,** 334 Mass. 549, 566 (1956).

The burden of proof is on a taxpayer to make out a right to an abatement. ***Schlaiker v. Assessors of Great Barrington*,** 365 Mass. 243, 245 (1974). A taxpayer may sustain this burden by  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). An assessment is presumed to be valid unless the taxpayer is able to sustain its burden of proving otherwise. ***Schlaiker*,** 365 Mass. at 245***.***

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.

The fair cash value of property may be determined by recent sales of comparable properties in the market. Actual sales generally “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); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981); ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971).

In the present appeals, the appellant offered no affirmative evidence of market value to demonstrate that the subject property was overvalued. Rather, he focused on what he alleged to be an error on the part of the assessors: considering the subject property to be a four-bedroom dwelling when legally, per the deed restriction, it could only be a two-bedroom home. The Board found the appellant’s evidence to be lacking. Even assuming arguendo that the subject property must be valued as a two-bedroom home, there was nothing in the record to suggest that it would not sell in an arm’s-length transaction as a two-bedroom home for its assessed values for the fiscal years at issue. *See* ***Paul T. Sullivan v. Assessors of Amesbury****,* Mass. ATB Findings of Fact and Reports 2012-714, 722 (finding that evidence of a classification error by the assessors, without more, was insufficient to prove that the assessed value of the subject property exceeded its fair cash value).

In addition, the Board found that the evidence offered by the assessors provided strong support for the subject assessments. The assessors offered voluminous sales data from Wayland during the relevant time periods, and the sale prices provided a persuasive indication that the subject property was not overvalued. In reaching this conclusion, the Board gave weight to the sale prices of the two properties having the same deed restriction as the subject property, both of which were listed as three-bedroom homes in the marketing materials. One of those properties sold for $610,000, despite significant inferiorities to the subject property in size and amenities, while the other sold for $630,000. The Board found that these two sales supported the assessed values of $593,220, $613,100, and $612,900, respectively, for the fiscal years at issue.

The Board likewise gave weight to the market evidence of two-bedroom homes entered into the record by the assessors. That evidence provided a persuasive indication that two-bedroom homes in Wayland that are comparable in size to the subject property sold for as much as, if not more than, the subject property’s assessed values for each of the fiscal years at issue.

In conclusion, on the basis of the record in its totality, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property’s assessed values exceeded its fair cash values for each of the fiscal years at issue. Accordingly, the Board issued decisions for the appellee in these appeals.

**THE** **APPELLATE TAX BOARD**

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

#      Thomas W. Hammond, Jr., Chairman

**A true copy,**

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

**Clerk of the Board**