

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

STEPHEN E. SZYMCZAK

v.

BOARD OF ASSESSORS OF  
THE CITY OF WORCESTER

Docket No. F334162

Promulgated:  
March 5, 2019

This is an appeal 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 City of Worcester ("assessors" or "appellee") to abate a tax on real estate located in the City of Worcester owned by Stephen E. Szymczak ("appellant") for fiscal year 2017 ("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 appellee.

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.

*Stephen E. Szymczak, pro se, for the appellant.*

*John O'Day, Esq. for the appellee.*

### 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, 2016, the appellant was the assessed owner of a 0.24-acre parcel of real estate improved with a twelve-unit apartment complex located at 14 Esther Street in Worcester ("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
\$704,500	\$19.22 per \$1,000	\$13,540.49	Y	01/23/2017	04/23/2017	07/17/2017

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.

The appellant contended that the subject property was over-valued and/or disproportionately assessed. In support of his contentions, Mr. Szymczak offered his testimony and several exhibits contained in an "Informational Packet." Mr. Szymczak first presented Multiple Listings Service ("MLS") printouts of seven purportedly comparable apartment building sales in Worcester. These sales occurred between January 2014 and February

2016 and ranged from sale prices of \$157,000 to \$523,000. None of the MLS printouts indicated the number of bedrooms in each unit. Two of the purportedly comparable sales had "deferred maintenance" listed as a condition. One of those properties, 69 West Street, sold on July 1, 2015 for \$490,000 and it subsequently sold on February 24, 2016 for only \$163,334. The appellant offered no explanation of the circumstances surrounding the quick subsequent sale at a substantially reduced price. Two other purportedly comparable sales listed the "research status" as "allocated," a term that the appellant did not explain.

Mr. Szymczak next testified to the condition of the subject property and the neighborhood. He testified that there have been no improvements to the subject property in five years and that its cellar flooded each time it rained. He further testified that there have been recent shootings on nearby Millbury Street, adding to the perception that the neighborhood is unsafe; moreover, since the erection of the new Worcester Regional Transportation Authority building, the subject property's general vicinity "smells bad."

The appellant next testified to the income and expenses generated by the subject property. For 2015, the appellant testified to \$59,747 in rent and expenses of \$55,881, and for 2016 he testified to \$52,110 in rent and expenses of \$48,893. The appellant offered no specific breakdown or other information of

his income and expenses. He testified that the subject property was not operating at full capacity and that it was difficult to retain tenants long term. Lastly, the appellant produced a "Purchase and Sale Agreement" dated September 13, 2016 to sell the subject property for \$427,000, but he testified that this sale never came to fruition.

On cross-examination of Mr. Szymczak, the appellee submitted photographs to indicate that the subject property also included an attached garage building with ten enclosed parking spaces. The appellee then rested on the assessed value.

Based on the evidence presented, the Presiding Commissioner found that the appellant did not meet his burden of demonstrating that the subject property's assessment exceeds its fair cash value for the fiscal year at issue. The sparsity of information presented by Mr. Szymczak for his seven comparable sales could not be relied on to formulate a useful comparison to the subject property. He failed to include, for example, a breakdown of the number of bedrooms in each unit and the condition of these units, and he failed to make time or location adjustments. Finally, the appellant failed to address circumstances like "deferred maintenance" issues, what an "allocated" sale was, and the circumstances surrounding the quick resale of 69 West Street for a third of its original sale price about six months later. The Presiding Commissioner found that these unexplained circumstances

undercut the reliability of the sale prices as evidence of the subject property's fair cash value.

Moreover, the Presiding Commissioner found that the ten enclosed garage spaces at the subject property enhanced its fair market value. The appellant did not indicate whether his seven purportedly comparable properties included similar parking amenities; if they did not, an adjustment would have to be made to those properties' selling prices to account for that crucial difference.

Finally, while he claimed disproportionate assessment, the appellant offered evidence of only seven purportedly comparable properties in Worcester. His analysis did not contain any evidence or raise an inference that a widespread scheme of intentional disproportionate assessment existed in Worcester. Therefore, the Presiding Commissioner found that the appellant failed to meet his burden of proving that the assessors were engaged in an intentional widespread scheme of disproportionate assessment.

Accordingly, on the basis of the foregoing findings of fact, the Presiding Commissioner issued a decision for the appellee.

#### **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).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (citing **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245).

The mere production of evidence is not enough to meet the taxpayer's burden of proving overvaluation; the evidence must be credible and persuasive. See **Foxboro Assocs. v. Assessors of Foxborough**, 385 Mass. 679, 691 (1982). The Presiding Commissioner first noted that the appellant failed to make adjustments to his purportedly comparable properties to account for any key differences that may have existed, including timing of sale, number of bedrooms, and location of properties, which would have affected the comparability of those properties to the subject property. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082 ("Moreover, when comparable sales are used, allowances must be

made for various factors which would otherwise cause disparities in the comparable properties' sale prices.").

Moreover, some of the MLS printouts included notes like "allocated" and "deferred maintenance," and other factors, like the quick resale of 69 West Street for a third of its original sale price, undercutting their reliability as evidence of the subject property's fair cash value. The Presiding Commissioner found and ruled that the appellant's sales-comparison evidence did not constitute a reliable, credible, or persuasive indicator of the subject property's fair cash value for the fiscal year at issue.

The Presiding Commissioner further found that the ten enclosed parking spaces in the garage building added value to the subject property. If the purportedly comparable properties did not include equivalent parking, the appellant would have been required to adjust his comparable sale price to reflect that crucial difference. See *Gacicia v. Assessors of Boston*, Mass. ATB Findings of Fact and Reports 2013-896, 906 (finding that consideration of indoor parking spaces "greatly enhanced" the value of the taxpayer's downtown Boston property).

In reaching his decision in this appeal, the Presiding Commissioner was not required to believe the testimony of any particular witness or adopt any particular method of valuation that a witness suggested. Rather, he could accept those portions

of the evidence that he determined had more convincing weight. *Foxboro Assocs.*, 385 Mass. at 683; *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 470 (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." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

Finally, "[i]n order to obtain relief on the basis of disproportionate assessment, a taxpayer must show that there is an 'intentional policy or scheme of valuing properties or classes of properties at a lower percentage of fair cash value than the taxpayer's property.'" *Brown v. Assessors of Brookline*, 43 Mass. App. Ct. 327, 332 (1997) (quoting *Shoppers' World, Inc. v. Assessors of Framingham*, 348 Mass. 366, 377 (1965)). The appellant failed to introduce sufficient evidence to show that a policy or scheme of discriminatory, disproportionate assessment was employed by the assessors against any class of properties in Worcester.

The Presiding Commissioner found and ruled that the appellant failed to present credible evidence to support his claim that the subject property was overvalued or was disproportionately assessed for the fiscal year at issue. The Board, therefore, issued a decision for the appellee.



THE APPELLATE TAX BOARD

By: James D. Rose  
James D. Rose, Commissioner

A true copy,

Attest: Wm. J. Roberts  
Clerk of the Board