

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**RONALD VITALE**

**v.**

**BOARD OF ASSESSORS OF  
THE CITY OF EVERETT**

Docket No. F349911

Promulgated:  
March 27, 2025

This is an appeal originally filed as a Statement Under the Informal Procedure<sup>1</sup> pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the City of Everett ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Ronald Vitale ("appellant") and Diana Vitale for fiscal year 2023 ("fiscal year at issue"). In accordance with 831 CMR 1.30(1), the parties' request to receive a decision from the Appellate Tax Board ("Board") without a hearing was allowed.

Commissioner Patricia Ann Metzger was joined by Chairman DeFrancisco and Commissioners Good, Elliott, and Bernier in the decision for the appellant.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

*Ronald Vitale, pro se*, for the appellant.

*Bernard Devereux*, assessor, for the appellee.

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<sup>1</sup> Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings to the formal docket. See G.L. c. 58A, § 7A.

## **FINDINGS OF FACT AND REPORT**

Based on the parties' written statements and exhibits admitted into evidence, the Board made the following findings of fact.

On January 1, 2022, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of the property located at 613 Broadway (Rt. 99) in Everett ("subject property"). The subject property is a 2,173 square-foot parcel improved with a three-family apartment building, constructed in about 1900, comprised of 2,891 square feet of finished living area, with twelve rooms, including six bedrooms and three full bathrooms. The kitchens and bathrooms are rated average. Depreciation is also average at 30%. The subject property has an overall grade of "C," and the traffic on the street on which the subject property is located is rated as "heavy."

The assessors valued the subject property at \$729,500 for the fiscal year at issue and assessed a tax thereon, at a rate of \$11.78 per \$1,000, in the total amount of \$8,593.51. The appellant timely paid the tax due for the fiscal year at issue without incurring interest. On January 23, 2023, the appellant timely filed an abatement application, which was denied by a vote of the assessors on April 19, 2023. On May 24, 2023, the appellant seasonably filed an appeal with the Board. Based on the foregoing,

the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The assessors presented their case through the written testimony of Assessor Devereux ("assessor" or "Mr. Devereux"), their comparable-sales analysis, and jurisdictional documents. The assessors submitted sales information for the thirty-three three-family properties that sold in Everett in 2021, focusing on the following three sales: 862 Broadway (sale price \$790,000); 291-293 Chelsea (sale price \$784,900); and 96 Vernal (sale price \$885,000). Having adjusted for market appreciation in the three-family market segment in Everett in 2021 and the availability of off-street parking, the assessors determined that the adjusted sale prices of these three properties ranged from \$812,100 to \$832,500.<sup>2</sup> The assessors noted that the assessed value of the subject property was less than these adjusted values, and they maintained that the subject property was appropriately assessed at \$729,500.

The appellant also submitted a valuation analysis, focusing on the 2021 sales of thirty-three three-family properties that the assessors had reviewed in determining the value of the subject property. Specifically, the appellant argued that the assessors'

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<sup>2</sup>The assessors also adjusted for the increased size of living area of 862 Broadway but inexplicably did not make adjustments for living area for the other two purportedly comparable properties. The assessors also adjusted for the superiority of the neighborhood of 96 Vernal.

valuation of the subject property was flawed because it was calculated based on sales of properties that were not, according to the appellant, comparable to the subject property. The appellant argued that although they were all three-family properties in Everett, only one of the properties used in the assessors' analysis was comparable to the subject property, in that it had the same number of rooms, bedrooms, and bathrooms: 33 Waters Avenue, which sold for \$565,000.<sup>3</sup>

The appellant also emphasized that the subject property has no off-street parking and severely restricted on-street parking, and he noted that the subject property is located in a busy commercial zone, differentiating it from the three properties the assessors focused on in calculating the assessed value of the subject property. The appellant argued that these factors contributed significantly to a lower fair market value of the subject property. Based on the above, the appellant's opinion of value of the subject property for the fiscal year at issue was \$632,560.

Based on the evidence of record, the Board found that the three properties most comparable to the subject property were the above-referenced properties: 862 Broadway, 291-293 Chelsea, and 96 Vernal. The Board found that the adjustments to the sale prices of

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<sup>3</sup> The sale price of 33 Waters Avenue was dismissed by the assessors as non-probative of the valuation of the subject property due to the unusual financing situation of 33 Waters Avenue.

these properties made by the assessors were flawed. In particular, the Board found that the assessors' analysis failed to adjust for the 30% depreciation rate of the subject property, and it did not adjust for the larger living area of one of the comparable properties. Furthermore, the Board found that the subject property does not have any available off-street parking spaces, and the assessors' analysis incorrectly attributed one off-street parking space to the subject property. In consideration of the record in its entirety, the Board arrived at a fair cash value of \$690,000 for the subject property for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant and ordered an abatement in the amount of \$465.31.

#### OPINION

Assessors are required to assess real estate at its fair cash value as of the first day of January preceding the fiscal year at issue. G.L. c. 59, § 38. Fair cash value is defined as the price upon which a willing buyer and a willing seller will agree if both 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 property at issue has a fair cash value lower than its assessed value. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to 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 this Board, “[t]he 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 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 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, 399-400 (citing *McCabe v. Chelsea*, 265 Mass. 494, 496 (1929)), *aff’d*, 73 Mass. App. Ct. 1107 (2008). “Adjustments must be made to . . . sales data to account for differences between the subject property and the properties offered for comparison.” *Doherty v. Assessors of Lee*, Mass. ATB Findings of Fact and Reports 2013-174, 181 (citing *Lareau v. Assessors of Norwell*, Mass. ATB Findings of Fact and Reports 2010-879, 889-90).

In the present appeal, the appellant provided persuasive evidence to substantiate his assertion that the assessed value of the subject property was greater than its fair cash value for the

fiscal year at issue. Though the assessors based the valuation of the subject property on sales of comparable three-family properties that occurred in 2021, the adjustments made by the assessors, as described above, were inadequate to accurately reflect the fair cash value of the subject property.

The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment." ***Assessors of Quincy v. Boston Consol. Gas Co.***, 309 Mass. 60, 72 (1941). In evaluating the evidence before it, the Board selected from among the various elements of value and formed its own independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984).

The Board took into account the record as a whole focusing on the various factors differentiating the subject property from the comparable sales referenced above and determined that the fair cash value of the subject property was \$690,000 for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant in this appeal and ordered an abatement in the amount of \$465.31.

**THE APPELLATE TAX BOARD**

By:   
Mark J. DeFrancisco, Chairman

A true copy,

Attest:   
Clerk of the Board