COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# MATTHEW WOOD       v.    BOARD OF ASSESSORS OF

#     THE CITY OF BOSTON

Docket No. F332305   Promulgated:    December 20, 2018

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 Boston (“assessors” or “appellee”) to abate a tax on real estate located in the City of Boston, owned by Matthew Wood (“appellant” or “Mr. Wood”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2017 (“fiscal year at issue”).

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Scharaffa, Good, and Elliott joined him in the decision for the appellee, which is promulgated herewith.

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.

*Matthew Wood, pro se,* for the appellant.

*Laura Caltanco, 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 Appellate Tax Board (“Board”) made the following findings of fact.

The property at issue in this appeal is comprised of two parcels of abutting land improved by a single-family residence located at 58-60 Russell Street, in the Charlestown section of Boston (“subject property”). The assessors originally valued each parcel and assessed taxes for the fiscal year at issue as follows: 58 Russell Street was valued at $780,900 and assessed a tax, at a rate of $10.59 per thousand, in the total amount of $8,269.73; 60 Russell Street was valued at $789,300 and assessed a tax, at a rate of $10.59 per thousand, in the total amount of $8,358.69.

On December 30, 2016, Boston’s Collector of Taxes mailed the actual tax bills. In accordance with G.L. c. 59, § 57C, the appellant timely paid the taxes due without incurring interest. On January 5, 2017, in accordance with G.L. c. 59, § 59, the appellant timely filed an application for abatement with the assessors, which they partially granted on January 30, 2017, reducing the assessed value of 58 Russell Street to $683,400 and 60 Russell Street to $632,000, for a combined assessment, as abated, of $1,315,400.

On April 18, 2017, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal under the formal procedure with the Board for both parcels. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Mr. Wood appeared and testified on his own behalf. He is a certified general appraiser licensed in Massachusetts, New Hampshire, Rhode Island, Maine, and Vermont, and holds the position of vice president of CB Richard Ellis New England.

According to the property record cards submitted into evidence, the 58 Russell Street parcel has an area of 858 square feet and the 60 Russell Street parcel has an area of 1,306 square feet. The two parcels are improved with two Greek Revival homes constructed nearly 200 years ago that have been updated and combined into one single-family residence (“subject residence”). The combined living area of the subject residence is approximately 3,268 square feet and contains five bedrooms and two and a half bathrooms. The assessors’ records indicate that 58 Russell Street has 1,799 square feet of living area and 60 Russell Street has 1,469 square feet of living area.

On June 28, 2016, the appellant purchased the subject property and two adjacent parcels located at Bisco Place for $1,415,000. Bisco Place is a private way situated behind 58-60 Russell Street. The two Bisco Place parcels are not the subject of this appeal and no evidence as to their zoning, development potential, or potential use was introduced at the hearing.

In support of his claim for overvaluation, the appellant provided a report that included the three traditional approaches to value, plus a land value analysis and a rental analysis. Because the subject property was a single-family residence, the Board found that the most appropriate method of valuation was the sales comparison approach. The Board did not consider the income approach or rental analysis because no evidence was presented that the highest and best use of the subject property was as a rental property. The Board also rejected the cost approach given the age of the subject residence and the inherent difficulty in accurately quantifying depreciation. The appellant’s land value analysis was also unreliable because the appellant arrived at an apportioned value for the subject property by reducing his purchase price by a figure that he attributed to the Bisco Place parcels; however, since no evidence was offered regarding the zoning, development potential, or potential use of the Bisco Place parcels, this approach was neither substantiated nor reliable.

As to his sales approach, Mr. Wood submitted six sales he found on the Multiple Listing Service (“MLS”) to support his claim of overvaluation. Only one sale, 18 Ferrin Street containing 3,079 square feet and identified as Mr. Wood’s comparable sale number 3, was reasonably close to the 3,268 combined square feet of the subject residence. This comparable sold on November 11, 2015 for $878,000. However, based on the site map provided by the appellant, 18 Ferrin Street is immediately adjacent to Route 1; in fact, photographs offered into evidence by both parties clearly show an elevated portion of Route 1 within a few feet of this comparable property.

Several of Mr. Wood’s remaining sales were inferior to the subject residence in quality and condition. His comparable sale number 1 at 148 Bunker Hill Street, which contained a living area of approximately one-third the combined area of the subject residence and was similar in size to one of the combined units, is listed as “rehab only” and sold “as is.”

The listing for his comparable sale number 2 at 25 Brighton Street, with less than two-thirds the combined living area of the subject residence, also revealed that the property was in need of work; it “has much to offer the creative homeowner or seasoned developer” and offers prospective purchasers the opportunity to “redevelop this majestic property.” This property also appears to be in close proximity to Route 93.

Mr. Wood’s comparable sale number 4, the 2,600 square foot property located at 9 Lawnwood Place, also required substantial updating; the listing indicates that it has “exceptional bones” offering the “opportunity,” “options,” and the “potential” to create a custom home.

Similarly, his comparable sale number 5, the 2,610 square foot property at 6 Cross Street, was “in need of updating” but has “great bones” and “endless possibilities.”

Despite these deficiencies, Mr. Wood made no adjustments for condition, other than adjusting -10% for comparable sale numbers 3 and 5, which he found to be in superior condition to the subject residence. Only comparable sale number 2, located next to Route 93, was adjusted for location; no adjustment was made for comparable sale number 3, located immediately adjacent to Route 1.

In contrast to the deficiencies noted in Mr. Wood’s comparable sale properties, the subject residence is described in its MLS listing as “spectacular,” with “lush, custom designed and landscaped terrace gardens,” a “completely renovated kitchen,” a “climate controlled wine cellar,” and a “brand new laundry room.”

After considering all of the evidence, the Board ultimately found that the appellant did not meet his burden of proving that the subject property’s assessment exceeded its fair cash value for the fiscal year at issue. As detailed above, none of Mr. Wood’s valuation methodologies constituted credible evidence of overvaluation. The most appropriate method to value the subject property was the sales comparison approach. However, Mr. Wood’s approach was not credible because the sales he selected were generally not comparable in size and he failed to make adequate adjustments, particularly for condition and location.

In addition, the appellant’s purchase of the subject property for $1,415,000 on June 28, 2016, which occurred just six months after the assessment date, included two adjacent parcels on Bisco Place. Because the appellant chose not to challenge the assessed values of the two Bisco Place parcels, and no evidence was offered as to their zoning, development potential, or potential use, no credible evidence was offered as to the value of these two parcels. Therefore, the Board had no basis on which to determine the portion of the purchase price properly allocable to the subject property.

Accordingly, on the basis of the foregoing findings of fact, the Board found that the appellant failed to meet his burden of proving overvaluation 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 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).

In order to determine a property’s fair cash value, its highest and best use must first be ascertained. *See* ***Peterson v. Assessors of Boston***, 62 Mass. App. Ct. 428, 429 (2004). In the present appeal, the subject property’s actual use was as a single-family residence. The parties did not dispute that the subject property’s current use was its highest and best use, nor was there any evidence to the contrary in the record. Accordingly, the Board concluded that the subject property’s continued use as a single-family residence was its highest and best use.

Real estate valuation experts, the Massachusetts courts, and this Board generally 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). However, “[t]he introduction of evidence concerning value based on [cost] computations has been limited to special situations in which data cannot be reliably computed under the other two methods,” including where the property in question is a newer building or a special-purpose property. ***Correia,*** 375 Mass. at 362-63.

“[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). 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, 400, *aff’d,* 73 Mass. App. Ct. 1107 (2008). When comparable sales are used, however, allowances must be made for various factors that would otherwise cause disparities in the comparable properties’ sale prices. *See* ***Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke***, Mass. ATB Findings of Fact and Reports 1998-1072, 1082.

In the present appeal, the Board found the appellant’s sales analysis to be unpersuasive because he failed to adequately adjust the sales he used, which were for properties that were generally much smaller than the subject property and inferior to it in condition and location. *See, e.g.,* ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004); ***5’s Enuf* *v. Assessors of Monterey,*** Mass. ATB Findings of Fact and Reports 2018-49, 56 (“without appropriate adjustments . . . the assessed values of [comparable] properties [do] not provide reliable indicator[s] of the subject’s fair cash value”).

Further, actual sales of the subject property generally provide “very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the] particular property [under appeal].” ***New Boston Garden Corporation v. Assessors of Boston,*** 383 Mass. 456, 469 (1981) (quoting ***First National Stores, Inc. v. Assessors of Somerville,*** 358 Mass. 554, 560 (1971)). The circumstances surrounding actual sales of the subject property must be scrutinized. *See* ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 450 (1986).

In the present appeal, the appellant failed to offer reliable credible evidence concerning the value of either the subject property or the other parcels that he purchased in conjunction with the subject property. Accordingly, in the absence of such evidence, the Board found that the sale price of the subject property and the two adjacent lots on Bisco Place for approximately $100,000 more than the assessed value of the subject property supported the assessed value.

In reaching its decision in this appeal, the Board was not required to believe the testimony of any particular witness or adopt any particular method of valuation that a witness suggested. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. *See* ***Foxboro Associates,*** 385 Mass. at 683; ***New Boston Garden,*** 383 Mass. at 473; ***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.” ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977).

On this basis, the Board found and ruled that the appellant failed to demonstrate that the subject property’s assessment, as abated, exceeded its fair cash value for the fiscal year at issue. The Board, therefore, decided this appeal for the appellee.

             **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_**

 **Clerk of the Board**