**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**FREDERICK C. LANE v.    BOARD OF ASSESSORS OF**

**THE TOWN OF DOVER**

Docket No. F315302    Promulgated:

December 12, 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 Dover (“appellee” or “assessors”) to abate real estate taxes assessed on certain real property located in Dover and assessed to Frederick C. Lane (“appellant”), under G.L. c. 59, §§ 11 and 38, for fiscal year 2012 (“fiscal year at issue”).

Commissioner Scharaffa heard this appeal and was joined by Chairman Hammond and Commissioners Chmielinski and Rose in the 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.

*John J. Costanzo, Esq.* for the appellant*.*

*Kevin D. Batt, Esq.* and *Nina Pickering-Cook, Esq.* for the appellee*.*

**FINDINGS OF FACT AND REPORT**

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

On January 1, 2011, the relevant date of assessment for the fiscal year at issue, the appellant was the assessed owner of an 11.94-acre parcel of land, improved with a single-family home, located at 72 Farm Street in Dover (“subject property”). For assessment purposes, the subject property is designated on the property record card as map 9, block 134, lot 0.

For the fiscal year at issue, the assessors valued the subject property at $4,599,100 and assessed a tax thereon at the rate of $11.92 per thousand in the total amount of $54,821.27. On December 28, 2011, Dover’s Collector of Taxes sent out the town’s actual real estate tax bills for the fiscal year at issue. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On January 31, 2012, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors. On March 28, 2012, the assessors granted the appellant a partial abatement, reducing the value of the subject property by $208,200 to an adjusted value of $4,390,900, with an adjusted tax of $52,339.53. The amount of the abatement was based on the assessor’s re-characterization of the condition ratings of the subject property’s bathrooms, kitchen, and garages. Not satisfied with the amount of this abatement, on April 30, 2012, the appellant timely filed a Petition Under Formal Procedure with the Board, in accordance with G.L. c. 59, §§ 64 and 65. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant presented his case-in-chief through the testimony of Eric J. O’Neil, a licensed real estate appraiser. Based on Mr. O’Neil’s experience in residential real estate valuation and familiarity with properties in the area, the Board qualified him as an expert in residential real estate appraising, without objection from the assessors. In addition to the expert witness’ testimony and appraisal report, the appellants introduced deeds of five recently sold properties in Dover that the appellant argued were comparable to the subject property.

In defense of their assessments, the assessors cross-examined Mr. O’Neil and presented the testimony of Karen MacTavish, the assessor for the town of Dover. The assessors also introduced into evidence copies of the requisite jurisdictional documents, the subject property’s property record card for the fiscal year at issue, a listing of all sales in Dover for the period of January 1, 2009 through June 30, 2010, a Sale Verification Form completed and executed by the grantor who sold the subject property to the appellant in 2009, and aerial photographs of the subject property. Based on this evidence, as well as reasonable inferences drawn therefrom, the Board made the following findings of fact.

Dover is a residential community on the banks of the Charles River, approximately fifteen miles southwest of downtown Boston. The subject property is located in one of the most desirable neighborhoods in Dover, comprised of single-family dwellings. The subject property is improved by a two-story, Colonial-style home, with a wood-frame construction, clapboard siding, and an asphalt-shingle roof. The subject home, which was advertised as one of Dover’s “signature properties” when purchased by the appellant in 2009, contains 8,333[[1]](#footnote-1) square feet of living area, with a total of sixteen above-grade rooms, including nine bedrooms, six full bathrooms, and two half bathrooms. The home was built in 1914, with a number of original period finishes such as gumwood and mahogany wood detailing in the two-story living room and baluster engravings on the main staircase. The property record card for the subject property lists the dwelling as having a grade of “AA superb.” The kitchen has modern appliances, granite countertops, an adjoining butler’s pantry, and a center island equipped with a built-in gas cooktop. The bathrooms generally contain older fixtures. The home has hardwood flooring throughout and is equipped with a forced hot-water oil heating system.

Although the basement is unfinished, the attic contains approximately 1,000 square feet of finished living area, including two bedrooms and a bathroom. Additional amenities include eight fireplaces, an in-ground pool, a hot tub, and a tennis court. Surrounding the exterior of the dwelling are two porches, two patios, and a deck. The house is set back from the street and is surrounded by a barrier of trees, which provides a considerable amount of privacy. There is a gated entrance to a long driveway, which leads to both a two-car detached garage and a three-car detached garage, the latter of which has been converted into a gym. The grounds are professionally maintained and overlook a pond at the rear of the property.

The appellant purchased the subject property on June 30, 2009 for $4,420,000, or $29,100 more than its assessed value after abatement. The subject property had been listed by the seller at an asking price of $5,400,000. According to the Sale Verification Form completed and executed by the seller, the appellant purchased the property in an arm’s length transaction in which there were no special circumstances present to influence the sale price.

In estimating the fair market value of the subject property, the appellant’s expert witness, Mr. O’Neil, assumed that its highest and best use was its current use as a single family residence. He relied primarily on the sales-comparison approach, while using the cost approach as a check to ensure the reasonableness of the value derived under the sales-comparison approach. Because the original period finishes, such as the wood detailing and the baluster engravings, would render the cost of reproducing the house in its exact state to be prohibitive, Mr. O’Neil looked at the cost of replacing the home with one of similar quality as opposed to actual reproduction.

Mr. O’Neil reviewed sales of single-family residential properties in Dover based largely on their date of sale, lot size, gross living area, and proximity to water. From these properties, Mr. O’Neil chose five sales of purportedly comparable properties in Dover, which sold between November 19, 2008 and November 9, 2010 and which he determined to be the most comparable sales for the fiscal year at issue, making adjustments for differing characteristics, as summarized in the following table:

|  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- |
|  | Subject Property | Sale 1 | | Sale 2 | | Sale 3 | |
|  | 72 Farm St | 164-A Centre St | | 16 Donnelly Rd | | 3 Claybrook Rd | |
| Sale Date |  | 7/23/2009 | | 5/6/2010 | | 11/19/2008 | |
| Sale Price |  | $2,200,000 | | $2,100,000 | | $2,000,000 | |
| **VALUE ADJUSTMENTS** | | | | | | | |
| Land Size (acres) | 11.94 | 3.76 | 160,000 | 2.1 | 180,000 | 16.4 | -80,000 |
| Gross Living Area (sq. ft.) | 8,333 | 9,775 | -72,100 | 6,900 | 71,650 | 3,696 | 231,850 |
| View | Woods-Pond | Woods | 100,000 | Neighborhood | 125,000 | Woods-River |  |
| Quality of Construction | Good | Good |  | Good |  | Inferior | 100,000 |
| Condition | Good | Good |  | Superior | -105,000 | Inferior | 200,000 |
| Room Count | 16 | 12 |  | 11 |  | 10 |  |
| Bedrooms | 9 | 5 | 20,000 | 4 | 25,000 | 4 | 25,000 |
| Full Bathrooms | 6 | 6 |  | 3 | 30,000 | 4 | 20,000 |
| Half Bathrooms | 2 | 1 | 5,000 | 2 |  | 0 | 10,000 |
| Basement | Full Unfinished | Full Finished | -5,000 | Full Finished | -15,000 | Slab | 10,000 |
| Heating/Cooling | Central/None | Central/Central | -10,000 | Central/Central | -10,000 | Central/Central | -10,000 |
| Garage | 5 Car Garage | 3 Car Garage | 20,000 | 3 Car Garage | 20,000 | 2 Car & Barn |  |
| Porch/Patio/Deck | 2/2/1 | 1/1/0 | 5,000 | Similar |  | Similar |  |
| Fireplaces | 8 | 5 | 7,500 | 3 | 12,500 | 1 | 17,500 |
| In-Ground Pool | Yes | No | 10,000 | No | 10,000 | Yes |  |
| Tennis Court | Yes | No | 5,000 | No | 5,000 | No | 5,000 |
|  |  |  |  |  |  |  |  |
| Net Adjustments |  | 11.20% | 245,400 | 16.60% | 349,150 | 26.50% | 529,350 |
| Adjusted Sale Price |  |  | 2,445,400 |  | 2,449,150 |  | 2,529,350 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  | Subject Property | Sale 4 | | Sale 5 | |
|  | 72 Farm St | 16 Old Colony Dr | | 93 Farm St | |
| Sale Date |  | 4/30/2010 | | 11/9/2010 | |
| Sale Price |  | $1,800,000 | | $2,995,000 | |
| **VALUE ADJUSTMENTS** | | | | | |
| Land Size (acres) | 11.94 | 2.84 | 180,000 | 2.01 | 200,000 |
| Gross Living Area (sq. ft.) | 8,333 | 7 | 64,750 | 6,843 | 74,500 |
| View | Woods-Pond | Woods | 100,000 | Woods | 100,000 |
| Quality of Construction | Good | Good |  | Superior | -299,500 |
| Condition | Good | Good |  | Superior | -299,500 |
| Room Count | 16 | 15 |  | 12 |  |
| Bedrooms | 9 | 5 | 20,000 | 5 |  |
| Full Bathrooms | 6 | 4 | 20,000 | 5 | 10,000 |
| Half Bathrooms | 2 | 2 |  | 2 |  |
| Basement | Full Unfinished | Full Unfinished |  | Full Unfinished |  |
| Heating/Cooling | Central/None | Central/Central | -10,000 | Central/Central | -10,000 |
| Garage | 5 Car Garage | 3 Car Garage | 20,000 | 3 Car Garage | 20,000 |
| Porch/Patio/Deck | 2/2/1 | 0/1/0 | 11,000 | 1/mult/0 | 2,500 |
| Fireplaces | 8 | 6 | 5,000 | 3 | 12,500 |
| In-Ground Pool | Yes | Yes |  | No | 10,000 |
| Tennis Court | Yes | No | 5,000 | No | 5,000 |
|  |  |  |  |  |  |
| Net Adjustments |  | 23.10% | 415,750 | -5.80% | -174,500 |
| Adjusted Sale Price |  |  | 2,215,750 |  | 2,820,500 |

Mr. O’Neil’s most significant adjustments accounted for disparities in gross living area, lot size, and view. With respect to gross living area, all of Mr. O’Neil’s comparable properties were adjusted at a rate of $50 per square foot. With respect to lot size, each property was adjusted at a rate of approximately $20,000 per acre; however, Mr. O’Neil did not take into account any sales of unimproved land in Dover into that figure. Further, Mr. O’Neil did not take into account whether the subject property could have been subdivided into additional lots and the associated potential increase in the value of the land in adjusting the respective land values of the purportedly comparable properties. To account for their lack of a water view, Mr. O’Neil made upward adjustments of $100,000 to sales one, four, and five. Sale two was adjusted upward by $125,000 to account for both its location in a crowded subdivision and lack of a water view. Mr. O’Neil testified that these adjustments were based on a “paired-sales analysis;” however, he did not provide any independent market data to support this assertion.

Additionally, sales two and five were adjusted downward by $105,000 and $599,000, respectively, to account for their superior construction quality and condition, and sale three was adjusted upward by $300,000 to account for its inferior construction quality and condition. Adjustments were also made with respect to whether the comparable properties included a finished basement or central air conditioning system. Finally, adjustments were made to account for the number of fireplaces, bathrooms, bedrooms, tennis courts, garage bays, swimming pools, porches, patios, and decks.

With one exception, all of Mr. O’Neil’s chosen properties were located in different neighborhoods than the subject property. None of the comparable-sale properties offered the subject property’s level of privacy. Mr. O’Neil’s chosen properties varied tremendously in lot size, spanning from 2.01 acres to 16.4 acres.

Mr. O’Neil’s sales-comparison analysis yielded adjusted sales prices ranging from $2,215,750 to $2,820,500. His cost analysis, which was used to gauge the reasonableness of his sales-comparison analysis, produced a value of $2,816,500. Using these approximations, Mr. O’Neil estimated the subject property’s fair cash value at $2,446,000 for the fiscal year at issue.

Mr. O’Neil did not take the 2009 sale of the subject property into account in deriving his valuation of the subject property as, in his opinion, the appellant “extremely overpaid for the property.” Mr. O’Neil speculated that there may have been various personal reasons why a buyer may have paid the ultimate sale price, but he offered no credible evidence that the sale was not made at arm’s length or any factors that were applicable to the appellant’s purchase of the subject property. When referencing one of the comparable sales used in his analysis that took place within a month of the 2009 sale of the subject property, Mr. O’Neil actually characterized that period of 2009 in his testimony as the “trough” of a depressed real estate market in Massachusetts. He did not find that the real estate values in Dover had changed sufficiently from 2009 and the date of assessment to warrant any time adjustment to the sale price of that comparable property. While he testified that over the period of 2006 to 2010, properties in all communities, including Dover, lost value, he also testified that by January 2011 the market had stabilized.

The assessors presented their case-in-chief through the testimony of Ms. Karen MacTavish, who has been the assessor for the Town of Dover for over thirty years. Ms. MacTavish first testified that the subject property’s June 30, 2009 sale supported its assessed value. Although the subject property was purchased approximately eighteen months before the relevant date of assessment, Ms. MacTavish testified that the real estate market for single-family homes in Dover remained relatively stable during that time period. Specifically, Ms. MacTavish testified that the median sale price for single-family homes in Dover slightly increased from $900,000 to $935,000 from July 1, 2009 through June 30, 2011. In support of this contention, the assessors submitted into evidence two schedules, which listed all residential property sales in Dover during fiscal years 2010 and 2011, respectively.

Ms. MacTavish further testified that the properties cited by Mr. O’Neil in his sales-comparison analysis were not sufficiently comparable to the subject property to provide a reliable indication of its value. Specifically, Ms. MacTavish testified that, in contrast to the uniquely private subject property, Mr. O’Neil’s chosen properties were all negatively impacted by adverse neighborhood conditions. For instance, Ms. MacTavish explained, both sales one and three were negatively impacted by heavy traffic on Centre Street, a main thoroughfare, especially during rush hour. She further explained that, although sale five was located on the same street as the subject property, that dwelling faced a barn and was separated from the street by only fifty feet. Similarly, because sales two and four were each located in crowded subdivisions, Ms. MacTavish opined, they afforded considerably less privacy than the subject property.

Rather than the $20,000 per acre used by Mr. O’Neil to adjust for differences in lot size, Ms. McTavish testified that Dover has historically used $50,000 per acre, which was supported by recent sales of unbuildable land in the town that ranged from $40,000 to $125,000 per acre. Ms. MacTavish opined that the subject property was suitable for subdivision into three residential lots, in accordance with Dover’s zoning regulations, which set forth minimum lot size and frontage requirements of two acres and 200 feet, respectively. As an 11.94 acre lot with approximately 730 feet of frontage, Ms. MacTavish explained, the subject property was large enough and had the requisite street frontage to be subdivided into three residential lots.

Based on all the evidence, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue. Given the unique characteristics of the subject property, the Board found that the subject property’s arm’s-length sale on June 30, 2009 for $4,420,000 was entitled to significant weight in the Board’s analysis. The appellant submitted no evidence indicating that the sale was made under compulsion or was in any other way not an arm’s-length transaction. Moreover, the Board found that Mr. O’Neil’s testimony that the appellant “extremely overpaid for the property” was unsubstantiated and therefore not credible. Although the subject property sold approximately eighteen months before the relevant date of assessment, the Board found that the real estate market for single-family homes in Dover remained stable during that time period. Accordingly, as a freely-entered, arm’s-length sale, the Board found that the subject property’s sales price was the best evidence of the subject’s assessed value.

The Board also found several unsubstantiated assumptions and flaws in Mr. O’Neil’s sales-comparison analysis. Most notably, Mr. O’Neil did not sufficiently articulate how he arrived at his dollar amount adjustments for lot size, gross living area, and view. Although Mr. O’Neil testified that these adjustments were based on a “paired-sales analysis,” he did not provide any independent market data to support this assertion. Further, while Mr. O’Neil testified at great length regarding the diminishing return on excess land, each comparable property was adjusted for lot size at an almost flat-rate of approximately $20,000 per acre, regardless of each property’s actual size and regardless of the fact that sales of unbuildable land in Dover would indicate a higher value. Accordingly, the Board found Mr. O’Neil’s adjustments for lot size, gross living area, and view to be unsubstantiated and therefore not persuasive.

Moreover, the Board found that the purportedly comparable properties relied upon by Mr. O’Neil were not sufficiently comparable to the subject property to accurately reflect its value. Specifically, the Board found that the selected properties did not share the same neighborhood influences as the subject property, including both the subject’s private location and, with one exception, its water view. Rather, all of the comparable properties advanced by Mr. O’Neil were negatively impacted by their location in a crowded subdivision, close proximity to a high-traffic area, or general lack of privacy. In light of these discrepancies, the Board found that the Mr. O’Neil’s comparable sales were not persuasive indicators as to the fair market value of the subject property.

Accordingly, based on all of the evidence, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued during the fiscal year at issue. As a result, the Board 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 means fair market value, which is defined as the price upon which a willing buyer and a willing seller would agree if both were fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The burden of proof is on the taxpayer to make out a right to an abatement. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The assessment is presumed valid unless the taxpayer meets its burden of proving otherwise. ***Id.*** In appeals before this Board, a 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)). It is well settled that actual sales of the subject property “are very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the property under appeal].” ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981) (quoting ***First Nat’l Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971)).

In the present appeal, based on the evidence presented, the Board found that the subject property’s arm’s-length sale on June 30, 2009 for $4,420,000 was entitled to significant weight, given the subject property’s unique attributes. Nothing in the record indicated that the appellant’s purchase of the subject property was anything but an arm’s-length transaction. Moreover, the Board found, on the basis of the evidence of record, that the residential housing market in Dover remained stable between the subject property’s dates of purchase and assessment. Therefore, the Board found that the subject property’s arm’s-length sale supported its assessed value.

The appellant advanced a sales-comparison analysis in an attempt to prove that the subject property was overvalued. “Evidence of the sale prices of reasonably comparable property is the next best evidence to the sale of the property in question.” ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004) (internal quotation marks omitted). Properties are considered “comparable” when they share “fundamental similarities” with the subject property, including age, location, and size. ***Id.*** “Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value.” ***New Boston Garden Corp.***, 383 Mass. at 470.

In the present appeal, the Board found that Mr. O’Neil’s sales-comparison analysis contained several unsubstantiated assumptions and flaws. Most importantly, Mr. O’Neil did not sufficiently articulate how he arrived at his dollar amount adjustments for lot size, gross living area, and view. Given their magnitude, Mr. O’Neil’s failure to provide independent market data in support of these adjustments undermined the credibility of his entire analysis. Moreover, the Board found that the purportedly comparable properties relied upon by Mr. O’Neil were not sufficiently comparable to the subject property to provide an accurate estimation of its value. Finally, the Board found that Mr. O’Neil did not take into account the potential for subdivision of the subject property and the resulting effect on its value. Thus, the Board found that Mr. O’Neil’s comparable sales were not persuasive indicators as to the fair market value of the subject property.

The Board is not required to believe the testimony of any particular witness. ***Assessors of Quincy v. Boston Consol. Gas. Co.***, 309 Mass. 60, 72 (1941). “The credibility of witnesses, the weight of evidence, and 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).

**CONCLUSION**

Based on the evidence presented, the Board found and ruled that the appellant did not meet his burden of proving that the assessed value of subject property was overly high. Accordingly, the Board decided this appeal in favor of the appellee.

**THE APPELLATE TAX BOARD**

**By:**

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

**A true copy,**

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

**Clerk of the Board**

1. The property record card for the subject property indicates that the subject home contains 7,323 square feet of gross living area. However, the appellant’s real estate valuation witness, Eric J. O’Neil, testified at the hearing before the Board that the property record card improperly omits approximately 1,000 square feet of living area in the attic. [↑](#footnote-ref-1)