



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket Nos. F329368 & F329362

**144 MAIN REALTY, LLC, HENRY B. &
SANDRA L. NAZZARO, TRUSTEES and**

142 MAIN REALTY, LLC, NAZZARO MAIN STREET, LLC

Appellants.

**BOARD OF ASSESSORS OF
THE TOWN OF NORTH READING**

Appellee.

DECISIONS WITH FINDINGS

The Decisions are for the appellee. On the basis of the evidence offered at the hearings of these appeals, the Presiding Commissioner made the following findings of fact and rulings of law.

These appeals involve the fiscal year 2016 assessed values of two contiguous parcels of real estate located in North Reading (together, the "subject properties"). The first parcel is located at 144 Main Street, and is a 0.428-acre parcel of land improved with a 2,400-square-foot building. The building, which was built in 1960, operated as a gas station at all times relevant to these appeals. Its assessed value for the fiscal year at issue was \$470,600.

The second parcel, located at 142 Main Street, is a 3.5-acre parcel of land which was operated as a trailer park during the periods relevant to these appeals. That parcel likewise had improvements, but detailed information regarding the improvements was not entered into the record. Its assessed value for the fiscal year at issue was \$455,200.

According to the evidence presented at these proceedings, the subject properties had common ownership under a group of entities operated by the Nazarro family. Following a family death, and as part of the settlement of an estate, the subject properties were sold together on the same date – January 23, 2015 – to two entities that

were also under common ownership. Both of the subject properties had tax liens on them at the time of their sale.

In presenting their argument that the subject properties were overvalued for the fiscal year at issue, the appellants offered into evidence, and relied exclusively on, the sales deeds for the subject properties. The sale price for 142 Main Street, as reflected on the deed, was \$450,000. The sale price for 144 Main Street, as reflected on the deed, was \$225,000. Because the assessed value for each parcel exceeded the sale price reflected on the deed, the appellants urged the Presiding Commissioner to conclude that they were assessed at more than their fair cash value. She declined to do so.

For numerous reasons, the Presiding Commissioner found that the sale prices reflected on the deeds did not furnish reliable evidence of the subject properties' fair cash values. First, the evidence showed that the subject properties were sold by the same or related sellers to the same or related buyers, on the same day. Such transactions, also known as portfolio transactions, often fail to provide reliable evidence of a particular property's individual market value, and the Board routinely rejects this type of valuation evidence. See, e.g., **Genzyme Corp. v. Assessors of Cambridge**, Mass. ATB Findings of Fact and Reports 2011-280, 345 ("The actual sale of the subject property . . . did not provide reliable evidence of its individual fair cash value because it was sold in a portfolio sale involving multiple properties."); **Mayflower Liberty Tree, L.L.C. v. Assessors of Danvers**, Mass. ATB Findings of Fact and Reports 2005-291, 328 ("The Board recognized that the portfolio sale did not provide a reliable basis for demonstrating the fair cash value of the subject property....").

Secondly, 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). For sale prices to furnish reliable evidence of value, they must have been the result of "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, 682-83 (1982). When circumstances are suggestive of compulsion, and that suggestion is not refuted, the Board has found that the sale of the subject is not the best indication of fair market value. For example, the Board has previously found that a sale by a highly-motivated seller did not qualify as an arm's-length sale and thus should be excluded from a comparable-sales analysis. **Bolduc v. Assessors of Norfolk**, Mass. ATB Findings of Fact and Reports 2012-1163, 1172 (finding that relocation assistance provided by the seller's employer, together with the seller's demonstrated need to relocate out of state, rendered the sale price of property at issue unreliable); see also **Glowacki v. Assessors of Upton**, Mass. ATB Findings of Fact and Reports 2013-685, 694 ("Like foreclosure sales, [short sales] suggest compulsion and should not be considered absent rebuttal of that suggestion, which was absent in these appeals." (citing **DSM Realty, Inc. v. Assessors of Andover**, 391 Mass. 1014 (1984))). In the present appeals, the subject properties were sold as part of the settlement of an estate, and there was a tax lien on both properties at the time of sale. The Presiding

Commissioner agreed with the assessors that these facts, taken together, suggested an element of compulsion on the part of the sellers, and the appellants offered nothing to refute that suggestion. The circumstances surrounding the sales of the subject properties provided but another indication that the sale prices recited on the deeds was not reliable evidence of their fair market values, and the Presiding Commissioner therefore declined to place weight on that evidence.

Thirdly, with respect to 142 Main Street, the sale price recited on the deed was approximately one percent less than its assessed value. "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 Consolidated Gas Co.**, 309 Mass. 60, 72 (1941) (other citations omitted). Even assuming arguendo that weight was afforded to the actual sale price of 142 Main Street, such evidence would be insufficient to overcome the presumed validity of the assessment.

Lastly, with respect to 144 Main Street, in addition to the deficiencies in the evidence offered by the appellants, the Presiding Commissioner found and ruled that the comparable sales and assessment information entered into the record by the assessors provided persuasive support for the assessed value of that property. The assessors entered into the record information regarding six sales of commercial properties that were located near the subject property, in North Reading's main business district. Those sales were arm's-length transactions, were substantially comparable to the subject property, and each of them sold for significantly more than the assessed value of 144 Main Street. Particularly probative was the sale of 212 Main Street. That property was nearly identical in lot size and building area to the subject property, and its building was also close in age to the subject property's building. That property sold for \$885,000 on November 10, 2014, and the Presiding Commissioner found that this evidence, along with the other information offered by the assessors, provided additional support for the assessment.

In conclusion, because the appellants failed to present sufficiently reliable or persuasive evidence that the assessed values of the subject properties exceeded their fair cash values for fiscal year 2016, the Presiding Commissioner found and ruled that they did not meet their burden of proof, and issued decisions for the appellee in these appeals.

These are single-member decisions promulgated in accordance with G.L. c. 58A, § 1A.

APPELLATE TAX BOARD

By: Patricia M Good
Patricia M. Good, Commissioner

Attest William J. Roberts
Clerk of the Board

Date: JUN 13 2017
(Seal)

NOTICE: Either party to these proceedings may appeal these decisions to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.

**Location: 142 and 144 Main Street
Year: 2016**