

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ROBERT A. WATERS

v.

BOARD OF ASSESSORS
OF THE TOWN OF
WAYLAND

Docket Nos. F202086-F202089

Promulgated:
June 21, 2001

These are appeals under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate real estate taxes assessed against the appellant under G.L. c. 59, § 38, for fiscal year 1992.

Commissioner Lomans heard the appeals and was joined in the decision for the appellant by current-Chairman Burns, then-Chairman Gurge and Commissioner Scharaffa.

These findings of fact are made pursuant to a request by the appellant under G.L. c. 58A, § 13, and 831 CMR 1.32.

Joseph F. Dalton, Esq. and Ellen M. Hutchinson, Esq.,
for the appellant.

Mark Lanza, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and exhibits offered into evidence at the hearing, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 1991, Robert A. Waters (the "appellant") was the Trustee of Precision Realty Trust, the assessed owner of four condominium units located at 526 Boston Post Road (State Route 20), in the town of Wayland ("the subject properties"). The subject properties are located in the Longfellow Center, which is situated in an area zoned for limited commercial and light industrial use. Pursuant to the Master Deed, the subject properties are prohibited from being used as personal service facilities such as medical condominiums. The commercial uses along Boston Post Road include professional offices, restaurants and a veterinary clinic. The predominant industrial uses within the area occur in one-story light manufacturing facilities.

Also located in Longfellow Center are three light industrial buildings and a recreational tennis facility. Municipal water and sewer, gas, electricity and telephone service are available to the properties in the complex. On the eastside of the site, the property is bordered by the former Wayland town dump. The parties are in agreement, and the Board found, that the current use of the subject properties, as office condominiums, represents their highest and best use.

The Wayland Board of Assessors ("Assessors") valued the properties and assessed taxes, at the rate of \$14.57 per thousand, as summarized in the following table:

| Docket No. | Unit No. | Unit Size sf ¹ | Assessed Value | Assessed Value psf ² | Tax Assessed |
|------------|----------|---------------------------|----------------|---------------------------------|--------------|
| 202086 | 526B | 4,495 | \$404,600.00 | \$90.00 | \$5,895.02 |
| 202087 | 526E | 4,458 | \$401,200.00 | \$90.00 | \$5,845.48 |
| 202088 | 526F | 4,460 | \$401,400.00 | \$90.00 | \$5,848.40 |
| 202089 | 526G | 4,483 | \$403,500.00 | \$90.00 | \$5,879.00 |

The appellant paid all assessed taxes without incurring interest. The appellant timely filed applications for abatement with the Assessors, which were denied, and then timely filed his appeals with the Board. On this basis, the Board found that it had jurisdiction over these appeals.

The Board qualified the appellant's valuation witness as an expert. The appellant's expert valued the subject properties using both the sales-comparison and the income-capitalization methods. His income-capitalization approach, however, contained significant errors which compromised this approach to value. For example, in calculating the subject properties' per-square foot value,³ the narrative portion of the expert's report included an

¹ "sf" is an abbreviation for square feet.

² "psf" is an abbreviation for per-square foot.

³ The appellant's expert's report was prepared for the five units held by the Precision Realty Trust. Only four of the units are at issue in these appeals.

owner's expense of \$491.77 per month per unit, for a total annual expense allowance of \$29,506.20.⁴ In his calculations, however, the expert used an owner's expense of \$42,368. The result was a reduction in net operating income of \$12,862, and a corresponding reduction in the subject properties' per-square foot values. On this basis, the Board found that the expert's income-capitalization approach was flawed and produced an artificially low estimate of value for the subject properties. Accordingly, the Board did not rely on the expert's income-capitalization method of valuation.

In his sales-comparison approach, the appellant's expert reviewed twenty sales of commercial condominium units located in the towns of Wayland, Sudbury and Framingham, during the period January, 1992 through September, 1994. In his report, however, the appellant's expert relied on only sixteen sales that he considered to be the most comparable properties to the subject properties. These comparable properties ranged in size from 366 square feet to 5,859 square feet with an average selling price of \$115.47 per-square foot. After downwardly

⁴ The annual expense was arrived at by first multiplying the monthly expense of \$491.77 times 12 months. The result, \$5,901.24, was then multiplied by the number of units, 5. As previously noted, the expert's report was prepared for the five units held by the Precision Realty Trust.

adjusting his comparable properties' per-square-foot selling prices for such factors as location, unit condition and size, and date of sale, when compared to that of the subject properties, the appellant's expert concluded that the per-square-foot value of the subject properties for fiscal year 1992 was \$40.00.

The Board found that of the sixteen comparables used by the appellant's expert, seven were medical condominiums, a use prohibited by the subject properties' Master Deed, and five were sales by banks, which, under the circumstances, carried an inference of compulsion. Accordingly, the Board placed little reliance on these sales. However, the Board also found that the four remaining properties were reasonably comparable to the subject properties. These comparable properties ranged in size from 1,036 to 5,859 square feet and sold for \$54.05 to \$110.54 per-square foot, with an average selling price of \$78.38 per-square foot. The Board found that, generally, the larger comparable properties had lower per-square-foot values than the smaller ones. On this basis, the Board found that the subject properties' per-square-foot value was slightly lower than the average value indicated by the comparable properties.

In support of the subject assessment, the Assessors offered the testimony and report of a real estate appraiser whom the Board qualified as an expert witness. The Assessors' expert also relied upon the sales-comparison method to estimate the subject properties' fair cash values. In preparing his report, the Assessors' expert witness researched sales of office condominiums in Wayland and the neighboring communities of Sudbury, Waltham and Arlington. He presented to the Board twenty-four sales that occurred during the period July, 1990 through October, 1992. The units ranged in size from 501 to 3,147 square feet with an average selling price of \$77.69 per-square foot. After adjusting his comparable properties' per-square foot value for location, size, quality, and condition differences with the subject properties, the Assessors' expert witness concluded that the Assessors' value of \$90.00 per-square foot was an appropriate amount to use for valuing the subject properties for fiscal year 1992.

The Board found that of the Assessors' expert's twenty-four comparables, twenty were sales by banks that apparently owned the properties as a result of foreclosure proceedings or deeds in lieu of foreclosure. Therefore, the Board also found that these bank sales carried an

indicia of compulsion that was unrebutted. Accordingly, the Board found that these sales provided little probative value for estimating the fair cash value of the subject properties. The Board further found that the remaining four private sales were significantly smaller than the subject properties, ranging in size from 503 square feet to 1,577 square feet and had an average selling price of \$78.32 per-square foot. Therefore, the Board also found that the average per-square foot value indicated by these comparable properties was slightly higher than the value attributable to the subject properties during the fiscal year at issue in these appeals.

Based on the evidence presented, the Board found that the appellant met its burden of proving that the subject properties were over-valued for fiscal year 1992. The Board further found that the fair cash value for the subject properties was \$75.00 per-square foot compared to the assessed value of \$90.00 per-square foot. Accordingly, the Board issued decisions for the appellant and granted abatements as follows:

| Docket No. | Unit | Assessed Value | Tax Assessed | Fair Cash Value | Over-Valuation | Abatement |
|-------------------|-------------|-----------------------|---------------------|------------------------|-----------------------|------------------|
| 202086 | 526B | \$404,600 | \$5,895.02 | \$337,100 | \$67,500 | \$983.48 |
| 202087 | 526E | \$401,200 | \$5,845.48 | \$334,350 | \$66,850 | \$974.00 |
| 202088 | 526F | \$401,400 | \$5,848.40 | \$334,500 | \$66,900 | \$974.73 |
| 202089 | 526G | \$403,500 | \$5,879.00 | \$336,200 | \$67,300 | \$980.56 |

OPINION

The 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 them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

"[T]he Board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) quoting ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). "It is well established that the burden of persuasion is on the taxpayer to show that its property was overvalued." ***Northwest Assocs. V. Assessors of Burlington***, 385 Mass. 679, 684 (1984); ***Schlaiker***, 365 Mass. at 245.

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.***, 393 Mass. at 600, quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983).

In the present appeals, the Board found that the appellant produced substantial, persuasive and affirmative evidence which undermined the Assessors' valuation and demonstrated that the fair cash value of the subject properties was less than their assessments. Accordingly, the Board ruled that the appellant sustained his burden of proving that the subject properties were overvalued. See **Schlaiker**, 365 Mass. at 245.

Generally, real estate valuation experts, the Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income-capitalization, sales-comparison, and cost. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). In the present appeals, the appellant's expert real estate appraiser used both the income-capitalization and the sales-comparison approach to estimate the subject properties' fair cash values. Due to significant errors in his income-capitalization method, however, the Board did not rely on this method. Instead, the Board relied exclusively on the sales-comparison method which the appellant's expert real estate appraiser also used and upon which the Assessors' expert solely relied.

The fair cash value of property may be determined by recent sales of comparable properties in the market.

Correia, 375 Mass. at 362. Actual sales of the subject property generally "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. Board of Assessors of Foxborough**, 385 Mass. 679, 682 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981); **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 560 (1971). Nevertheless, the sale price recited in the deed is not conclusive evidence of fair cash value. **Foxboro Associates**, 385 Mass. at 682-683.

Evidence of sales may be considered "only if they are free and not under compulsion." **Congregation of the Mission of St. Vincent dePaul v. Commonwealth**, 336 Mass. 357, 360 (1957). "A foreclosure sale inherently suggests a compulsion to sell; a proponent of evidence of such sale must show circumstances rebutting the suggestion of compulsion." **DSM Realty, Inc. v. Assessors of Andover**, 391 Mass. 1014 (1984). Similarly, a sale by a bank which acquired the property by foreclosure or a deed in lieu of foreclosure also carries an indicia of compulsion. **G.F. Springfield Management v. Board of Assessors of West**

Springfield, 2000 ATB Adv. Sh. 228, 242 (Docket No.F220841, F220843, April 5, 2000) and the cases cited therein.

In the present appeals, the appellant's expert suggested a fair cash value for the subject properties of \$40.00 per-square foot. In his sales-comparison method, the appellant's expert relied on sixteen comparables. The Board, however, found that seven of the comparable properties were medical office condominiums, a prohibited use for the subject properties. The Board further found that five of the comparables properties were sales by banks which carried an inference of compulsion. The appellant offered no evidence to rebut the presumption of compulsion. Therefore, the Board found that none of these twelve sales were reliable for estimating the subject properties' fair cash value. The Board found that the remaining four sales, which had an average selling price of \$78.38 per-square foot, after adjustments, were reasonably comparable to the subject properties. The Board further found that this per-square-foot value should be further adjusted downward to better reflect the value of the comparatively larger subject properties.

In contrast to the appellant's claim of value, the Assessors' expert suggested that the \$90.00 per-square-foot value used by the Assessors in valuing the subject

properties was appropriate. The Assessors' expert used only the sales-comparison method to value the subject properties. He relied on twenty-four sales of comparable properties. The Board found, however, that the vast majority of these properties, twenty, were either foreclosure sales or sales by banks that had acquired the properties through foreclosure or a deed in lieu of foreclosure. Like the appellant, the Assessors offered no evidence to rebut the presumption of compulsion to sell. Accordingly, the Board found that these twenty sales provided little probative value for estimating the subject properties' fair cash values. The Board further found that the remaining four properties, which were significantly smaller in size than the subject properties, had an average selling price of \$78.32 per-square foot. The Board further adjusted this per-square-foot value downward to reflect the subject properties' comparatively larger size and, compared with its finding regarding the per-square-foot value determined from the appellant's expert's comparables, found that the per-square-foot value of the subject properties for the fiscal year at issue was \$75.00.

In ***Robert A. Waters v. Board of Assessors of Wayland***, 1998 ATB Adv. Sh. 52, 53 (February 6, 1998), the Board found that the condominium units located at 526 Boston Post

Road, Wayland, owned by the Precision Realty Trust, the assessed owners of the properties at issue in the present appeals, were overvalued for fiscal years 1992, 1993, 1994 and 1995. For fiscal year 1992, however, the earlier Findings only addressed the valuation of one unit, Unit H, which is not at issue in the present appeals. **Waters**, 1998 ATB Adv. Sh. at 54. Based on the evidence presented by the parties' expert's analyzing the "size of the subject units, the location and limited use, together with the suggested comparables of both parties, the Board found fair cash values per square foot for . . . fiscal year 1992 [of] \$75.00." **Id.**, 1998 ATB Adv. Sh. at 59. The Board found that the evidence relied upon in the earlier Findings, including the experts' reports and testimony, was the exact same evidence as that relied upon in the present appeals. **Waters**, 1998 ATB Adv. Sh. at 53-58. Accordingly, the Board found that the earlier Findings were relevant in the present appeals.

The fair cash value of property cannot be proved with "mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment." **Assessors of Quincy v. Boston Consol. Gas**, 309 Mass. 60, 72 (1941). In reaching its opinion of fair cash value, the Board is not required to adopt any particular method of valuation that

an expert may suggest, but can accept those portions of the evidence which the Board determines have the more convincing weight. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 469, 473 (1981).

Based on the experts' reports, and the difference in size between the properties that the Board found comparable to the subject properties, the Board found that the subject properties had a fair cash value of \$75.00 per-square foot for fiscal year 1992. Accordingly, the Board found and ruled that the appellant met its burden of proving that the subject properties were overvalued and, therefore, issued a decision for the appellant granting appropriate abatements.

APPELLATE TAX BOARD

By: _____
Abigail A. Burns, Chairman

A true copy,

Attest: _____
Clerk of the Board

