

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ALTHEA L. BUCKLEY

v. BOARD OF ASSESSORS OF
THE CITY OF CAMBRIDGE

Docket No. F277142

Promulgated:
April 20, 2006

This is an appeal under the formal procedure, pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the City of Cambridge owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38, for fiscal year 2005.

Commissioner Scharaffa heard this appeal. He was joined in the decision for the appellant by Chairman Foley and Commissioners Gorton, Egan, and Rose.

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.

Althea L. Buckley, pro se, for the appellant.

Anthony M. Ambriano, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2004, Althea L. Buckley ("appellant") was the assessed owner of an improved parcel of real estate located at 83/83A Wendell Street in the City of Cambridge ("subject property"). The subject property measures approximately 41.5 feet by 69.0 feet and contains an estimated 2,863.5 square feet of land.¹ The subject property has 41.5 feet of frontage on Wendell Street, and is improved with a two-family dwelling. The Board of Assessors of Cambridge ("assessors") initially valued the property at \$976,900 and assessed a tax thereon, at the rate of \$7.78 per thousand, in the total amount of \$6,096.89.²

On November 1, 2004, Cambridge's Collector of Taxes sent out the city's actual real estate tax notices. In accordance with G.L. c. 59, § 57, the appellant paid the tax without incurring interest. On November 15, 2004, in accordance with G.L. c. 59, § 59, the appellant timely filed her application for abatement with the assessors. On November 23, 2004, the assessors granted the appellant a partial abatement by reducing the subject property's assessed value by \$67,200 to \$909,700. The appellant, however, disagreed with this result, and on January 18, 2005, in accordance with G.L. c. 59, §§ 64 and 65,

¹ These are the measurements contained in the March 28, 1964 deed conveying the subject property to the appellant. Other evidence entered into the record suggests that the parcel contains 2,880 square feet of land.

she seasonably filed her petition with the Appellate Tax Board ("Board"). On the basis of these facts, the Board found that it had jurisdiction to hear and decide this appeal.

At the hearing of this appeal, the appellant argued that the subject property was overvalued because the assessors had not adequately considered: the age, condition, and "hodge-podge" configuration of the dwelling on the subject property; the minimal size and limited street frontage of the subject property's parcel; the inability of the appellant to lease the rental unit in the dwelling; and the sale prices and assessments of what the appellant considered to be comparable properties. The appellant attempted to prove these assertions through her testimony and the introduction into evidence of a submission, which she had prepared, that analyzed the subject property's property record card as well as sales and assessments of purportedly comparable properties in Cambridge. Her submission also contained a written estimate of value prepared by a sales associate from The DeWolf Company, a real estate firm in Cambridge, which estimated the value of the subject property at \$725,000 as of September 19, 2002, approximately fifteen months before the relevant assessment date for fiscal year 2005. After cross-examining the appellant and introducing several

² The total tax includes a \$154.92 additional assessment under the Community Preservation Act and a \$1,658.31 reduction for the appellant's residential exemption.

jurisdictional documents into evidence, the assessors rested their case on the assessment, as previously abated. On the basis of this evidence, the Board made the following findings of fact.

The dwelling is an old-style, two-family, primarily two-story home. According to the property record card, the exterior is in very good condition while the interior is in average condition. The dwelling is an amalgamation of three different-sized and styled sections. Its original center section was built in the mid-1860s to mid-1870s.³ The front and back sections were added sometime later. In 2000, a City contractor damaged the front section of the dwelling while working on Cambridge's waste water management system. Repairs and renovations cost approximately \$150,000.

The dwelling contains a total of approximately 2,612 square feet of living space, which includes a 234 square-foot upper three-quarter-story space over the center section. The dwelling has a total of eleven rooms, including six bedrooms and two kitchens, plus one three-quarter and two full bathrooms, and an approximately 114 square-foot enclosed porch. The kitchen on the second floor was redone in the 1950s, and a new kitchen was put in the first floor in 2000. The five-foot-high 1,056

³ The property record card indicates that the dwelling was built in 1873; the appellant testified that the center section of the dwelling may be up to ten years older.

square-foot unfinished basement is constructed of field stone and concrete, which is covered with a skim coat of cement. The exterior siding is composed of clapboard in the front and aluminum siding elsewhere; the shed roof is nearly flat and is finished with asphalt shingles in some places and a rubber covering in others. There is a sixty square-foot storage room attached to the exterior of the dwelling. The property has a forced hot-water gas heating system, but no central air-conditioning or fireplaces. There is off-street parking on a paved driveway for one vehicle and a small rear yard.

To prove that the subject property was overvalued, the appellant relied primarily on mistakes in the assessors' property record card pertaining to the subject property and her analysis of other assessments and sales of what she considered to be reasonably comparable properties in the area. Some of the errors that the appellant pointed out in the assessors' property record card included overestimates of the total number of full bathrooms and off-street parking spaces, as well as listings of higher-quality finish construction materials for the basement, roof, and exterior siding than were actually used.

In her analysis of the assessments and sale prices associated with purportedly comparable properties, the appellant focused on three neighborhood properties with fiscal year 2005 assessments ranging from \$583,000 to \$1,092,200 and 2004 sale

prices ranging from \$525,000 to \$1,250,000. The following table summarizes the locations, assessments, sale prices and dates, as well as the features associated with these three purportedly comparable properties.

	<u>43 Sacramento St.</u>	<u>17 Prentiss St.</u>	<u>24 Langdon St.</u>
	<u>Comp 1</u>	<u>Comp 2</u>	<u>Comp 3</u>
<u>Assessment</u>	\$583,000	\$681,800	\$1,092,200
<u>Sale Price</u>	\$525,000	\$750,000	\$1,250,000
<u>Date of Sale</u>	01/15/2004	06/24/2004	06/17/2004
<u>Lot Size</u>	3,124 sq. ft.	2,751 sq. ft.	3,357 sq. ft.
<u>Units</u>	2	2	2
<u>Gr. Living Space</u>	2,826 sq. ft.	1,938 sq. ft.	4,498 sq. ft.
<u>Year Built</u>	1916	1886	1897
<u>Parking</u>	none	4 vehicles	1 vehicle
<u>Rooms</u>	12	8	15
<u>Full Bathrooms</u>	2	3	2
<u>3/4 Bathrooms</u>	none	none	none
<u>Overall Condition</u>	below average	average	above average
<u>Floors</u>	3	3	3
<u>Basement</u>	unfinished	unfinished	unfinished

On the basis of these facts, the Board found that the appellant met her burden of proving that the subject property was overvalued for fiscal year 2005. More specifically, the Board found that at least two of the comparable sales, which the appellant entered into evidence, comparables 1 and 2, were reasonably comparable to the subject property. After comparing many of these two comparables' features to the subject property's, including their lot sizes, locations, square footage, number of units, condition, number of bedrooms, number of bathrooms, age, availability of off-street parking, and sale prices, the Board determined that the subject property, which the assessors had valued at \$909,700 after abatement, was still

overvalued by approximately \$110,000 and had a fair cash value of \$800,000 as of the January 1, 2004 assessment date for fiscal year 2005. The Board also considered in its analysis, several errors that the assessors had made on the property record card pertaining to the subject property.

In rendering its decision in this appeal, the Board gave little weight to the written estimate of value prepared by a sales associate from The DeWolf Company. The Board found that there was no evidence of the sales associate's qualifications as an appraiser, and the sales associate was not presented as a witness to testify in the hearing of this appeal. The appellant, however, suggested that this opinion of value represented her own. The appellant also testified that the subject property "was worth \$620,000 without inflation." The Board could not discern exactly what the appellant meant by this statement in the context of determining the subject property's fair cash value as of the January 1, 2004 assessment date for fiscal year 2005. Under these circumstances, the Board considered the opinion of value submitted by the sales associate from DeWolf only as a possible floor for the fair cash value of the subject property.

The Board, therefore, relied primarily on comparable sale information in deciding this appeal for the appellant and in reducing the subject property's assessed value, as previously

abated by the assessors, from \$909,700 to \$800,000. On this basis, the Board granted an abatement in the amount of \$853.47.

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 in a free and open market 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).

The appellant has the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax." ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) ("***Schlaiker***") (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he [B]oard 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) ("***General Electric Co.***") (quoting ***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 appeal, the appellant pointed out errors in the property record card and introduced affirmative evidence of overvaluation in the form of comparable assessments and sales. The Board found that the errors in the property record card tended to overvalue the subject property. The Board further found that the properties on which the appellant relied to prove overvaluation were reasonably comparable to the subject property and their sale prices adequately demonstrated that the subject property was overvalued as of the January 1, 2004 assessment date for fiscal year 2005. After introducing several jurisdictional documents and cross-examining the appellant, the assessors did not call any witnesses to testify and simply rested on the assessment.

G.L. c. 58A, § 12B provides in pertinent part that "at any hearing relative to the assessed fair cash valuation or classification of property, evidence as to fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible." "The introduction of ample and substantial evidence in this regard may provide adequate support for . . . abatement." **Chouinard v. Assessors of Natick**, ATB Findings of

Fact and Reports 1998-299, 307-308 (citing **Garvey v. Assessors of West Newbury**, ATB Findings of Fact and Reports 1995-129, 135-36; **Swartz v. Assessors of Tisbury**, ATB Findings of Fact and Reports 1993-271, 279-80); see **Turner v. Assessors of Natick**, ATB Findings of Fact and Reports 1998-309, 317-18. In the present appeal, the Board allowed the introduction of comparable assessment information, but relied primarily on comparable sale information in finding the subject property's fair cash value for the fiscal year at issue.

In reaching its opinion of fair cash value, the Board was not required to believe the testimony of any particular witness or to 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. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 473 (1981); **Board of Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 701-702 (1972). In evaluating the evidence before it in this appeal, the Board selected from the various elements of value and formed its own independent judgment of fair cash value. See **General Electric Co.**, 393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984).

In rendering its decision in this appeal, the Board gave little weight to the written estimate of value prepared by a sales associate from The DeWolf Company, which had estimated the value of the subject property at \$725,000, as of September 19, 2002. The Board found that there was no evidence of the sales associate's qualifications as an appraiser, and the sales associate was not presented as a witness to testify in the hearing of this appeal. The appellant, however, suggested that this opinion of value represented her own. Under these circumstances, the Board considered the opinion of value only as a possible floor for the fair cash value of the subject property.

The Board need not specify the exact manner in which it arrived at its valuation. *Jordan Marsh v. Assessors of Malden*, 359 Mass. 196, 110 (1971). 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). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the [B]oard." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

Based on the evidence presented, the Board found and ruled that the appellant met her burden of proving that the subject

property's assessment was excessive. After comparing the subject property's features and assessment to other reasonably comparable properties' features and sale prices, the Board found and ruled that the subject property's assessment was excessive and should be reduced to \$800,000 as of the January 1, 2004 assessment date for fiscal year 2005.

On this basis, the Board decided this appeal for the appellant and granted an abatement in the amount of \$853.47.

APPELLATE TAX BOARD

By: _____
Anne T. Foley, Chairman

Frank J. Scharaffa, Commissioner

Donald E. Gorton, III, Commissioner

Nancy T. Egan, Commissioner

James D. Rose, Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board