

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

THEODORE F. NUBY, SR.

v. BOARD OF ASSESSORS OF
THE TOWN OF HOLBROOK

Docket No. F277280

Promulgated:
September 18, 2006

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 appellee Board of Assessors to abate a tax on real estate located in the Town of Holbrook, owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38, for fiscal year 2005.

Commissioner Egan heard the appeal and issued a single-member decision for the appellee in accordance with G.L. c. 58A, § 1A.

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.

Theodore F. Nuby, Sr., pro se, for the appellant.

Arthur George, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2004, Theodore F. Nuby, Sr. ("the appellant") was the assessed owner of a parcel of real estate, improved with a single-family home, located at 45 Pond Street in the Town of Holbrook ("subject property"). For fiscal year 2005, ("the fiscal year at issue") the Board of Assessors of Holbrook ("assessors") valued the property at \$327,400 and assessed a tax at the rate of \$13.04 per thousand, in the amount of \$4,269.30. On January 14, 2005, the appellant timely filed with the assessors an application for abatement. The assessors denied the application on February 7, 2005, and on March 9, 2005, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, Commissioner Egan (the "Presiding Commissioner") found that the Board had jurisdiction over the subject appeal.

The subject property is an 8,900 square-foot parcel of real estate improved with a single-family, Colonial-style home and a one-car detached garage. The home, which was built in 1990, has a gross living area of 1,764 square feet with six rooms, including three bedrooms, as well as two full bathrooms and one half bathroom. The home also has

one fireplace and a 200 square-foot rear wooden deck. The home is heated by forced hot water, and the plumbing is modern.

The appellant testified that the subject property was overvalued because the property record card mistakenly listed the exterior of the home as vinyl siding when in fact the exterior was clapboard shingles. The appellant, however, did not offer any evidence of comparable sales or other data to challenge the assessment of the subject property. The assessors countered that the mistake did not affect the assessment of the subject property. To support their assertions, the assessors submitted two property record cards for the subject property from the fiscal year at issue, one listing the exterior as clapboard shingles and the other listing the exterior as vinyl siding. The assessments listed on both property record cards were identical, \$327,400, which the assessors maintained demonstrated that the error did not affect the assessment of the subject property. The assessors also submitted a computer printout from an assessing program, based on generally accepted assessing principles, which demonstrated that vinyl siding and clapboard shingles were assigned the same "index value" for the fiscal year at issue. The

assessors maintained that the same index value for these exterior coverings indicated that an assessment did not vary between a home with exterior walls of vinyl siding vis-à-vis a home with exterior siding composed of clapboard shingles.

Based on the evidence submitted, the Presiding Commissioner found that the appellant failed to meet his burden of proving that the subject property's assessed value of \$327,400 exceeded its fair cash value for the year at issue. The Presiding Commissioner found that the appellant's evidence, which consisted simply of his testimony focusing on the property record card error relative to the exterior of the home, failed to provide substantial evidence of the subject property's fair cash value. In fact, as indicated by the property record cards submitted by the assessors, and the generally accepted assessing principles underlying them, the error had no impact on the assessment of the subject property. Moreover, the appellant presented no evidence of comparable sales or assessments in the area. On this basis, the Presiding Commissioner ruled that the appellant failed to meet his burden of proving that the assessed value of the

subject property for the fiscal year at issue exceeded its fair cash value as of January 1, 2004 and thus issued a single-member decision for the appellee.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. The assessors are required to assess real estate at its fair cash value determined as of the first day of January of each year. G.L. c. 59, §§ 2A and 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 subject 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) (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) (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)). "A taxpayer may show that its property is overvalued by demonstrating that the assessors relied on inaccurate information contained in their property record cards that improperly increased the value of the subject property." **Kelly v. Board of Assessors of Bedford**, ATB Findings of Fact and Reports 1998-941, 946; see also **Olivieri v. Board of Assessors of Egremont**, ATB Findings of Fact and Reports 1998-950, 955; **Mason v. Board of Assessors of Lakeville**, ATB Findings of Fact and Reports 1998-558, 566. 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 reproduction. **Correia v. New Bedford Development**

Authority, 375 Mass. 360, 362 (1978). “[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. Board of 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 contain credible data and information for determining the value of the property at issue. See **McCabe v. Chelsea**, 265 Mass. 494, 496 (1920).

In the instant appeal, the appellant attempted to demonstrate that the subject property was overvalued due to inaccurate information contained in the property record card relative to the exterior of his home. However, as the assessors’ evidence revealed, the error had no effect on the subject property’s assessment, and the appellant offered no evidence of whether, and to what extent, this error altered the proper valuation of his home for the fiscal year at issue. Moreover, the appellant offered no evidence of comparable sales or assessments to support his claim of overvaluation for the subject property.

The Presiding Commissioner found and ruled that the appellant offered insufficient evidence of the subject property's fair cash value, and he thus failed to meet his burden of proving his claim of overvaluation. On this basis, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By: _____
Nancy T. Egan, Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board