

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PETER STRAUSS

v.

BOARD OF ASSESSORS  
OF THE TOWN OF  
GREAT BARRINGTON

Docket No. F288045

Promulgated:  
August 15, 2008

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 appellee to abate taxes on real estate located in the Town of Great Barrington, owned by and assessed to Peter Strauss ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2007.

Commissioner Mulhern heard the appeal under G.L. c. 58A, § 1A and issued a single-member decision for the appellant. These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 C.M.R. 1.32.

Peter Strauss, *pro se*, for the appellant.

Karen Avalle, assessor, for the appellee.

## **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2006, the appellant was the assessed owner of a 0.40-acre parcel of real estate located at 23 Lake Avenue in the Town of Great Barrington ("subject property"). The parcel is improved with a single-family home with 1,364 square feet of finished living area.

For fiscal year 2007 ("fiscal year at issue"), the Board of Assessors of Great Barrington ("assessors") valued the subject property at \$303,000 and assessed a tax thereon, at a rate of \$11.40 per thousand, plus a Fire District Tax, for a total amount of \$3,696.60. The appellant paid the tax without incurring interest and timely filed an Application for Abatement with the assessors on October 30, 2006. On January 16, 2007, the assessors denied the abatement application, and on April 2, 2007, the appellant seasonably filed a Petition Under Formal Procedure with the Appellate Tax Board ("Board"). Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

**Sale #1**

On May 17, 2006, less than six months after the valuation date for the fiscal year at issue, the appellant purchased the subject property from Michael J. Marrone for \$335,000. Prior to the appellant's purchase and about seven months before the valuation date for the fiscal year at issue, one Shirley Lee sold the subject property in May 2005 to Mr. Marrone for \$210,000. At the time of the 2005 sale, the Multiple Listing Service ("MLS"), a widely used application in Massachusetts real property sales, listed the subject property for \$240,000. The MLS listing sheet further indicated that the property had sustained full market exposure for forty-one days.

The evidence provided by the appellant indicated that Ms. Lee had long suffered from Parkinson's disease. During that time, she had received extended rehabilitative care outside of her home. The appellant also argued that the subject property was in a deteriorating state at that time. Notwithstanding Ms. Lee's physical condition, the appellant contended that neither she nor her family were under any pressure to sell the subject property to Mr. Marrone.

In addition, the evidence showed that Mr. Marrone rehabilitated and repaired the subject property during his period of ownership, with an apparent eye toward resale.

In a prepared statement submitted into evidence, the appellant remarked that, "[it] is clear that [Mr. Marrone] bought [the subject property] to flip it [] as soon as he could and made it look as good as possible so he could maximize his profit." Mr. Marrone was not present and did not testify at the hearing of this appeal, and the appellant did not furnish any evidence to substantiate the amount that Mr. Marrone invested to improve the subject property.

**Sale #2**

In his prepared statement, the appellant described the circumstances surrounding his purchase of the subject property from Mr. Marrone in May 2006 for \$335,000. The appellant contended that he was "quite pressured" to acquire a residence at the time of purchase, but failed to substantiate this allegation. The appellant also argued that after his purchase, the subject property experienced myriad problems previously undetected by his home inspection. The appellant claimed that had he known of these problems before his purchase, he either would not have purchased the house or would have negotiated a much lower price. Finally, the appellant contended, without submitting any supporting documentary evidence, that he was forced to expend a great deal of time, money, and effort in

repairing and improving the subject property. Ultimately, in light of the alleged circumstances surrounding his May 2006 purchase of the subject property, the appellant argued that the fiscal year 2007 assessment was not a true reflection of the fair market value of property. The appellant maintained that although the subject property was listed on MLS at an above-market price in 2005, \$240,000 would nonetheless have more accurately represented the fair value of the subject property for the fiscal year at issue.

***Analysis***

Based on all of the evidence, the Presiding Commissioner gave approximately equal weight to the May 2005 and 2006 sales of the subject property because they represented the best evidence for determining the subject property's fair cash value for the fiscal year at issue. This analysis recognized the validity of the two sales while still taking into account the continuing improvements to the subject property from the date of the first sale to the second. This analysis further recognized that the improvements to the subject property were not fully completed as of the January 1, 2006 valuation date for the

fiscal year at issue.<sup>1</sup> The Presiding Commissioner also found that the appellant failed to prove the existence of deficiencies in the subject property at the time of the second sale and, to the extent that they may have existed, failed to quantify their purported effect on the subject property's fair cash value for the fiscal year at issue.

Accordingly, the Presiding Commissioner determined that the fair cash value for the subject property for the fiscal year at issue was \$287,500. The Presiding Commissioner, therefore, decided this appeal for the appellant and granted a tax abatement in the amount of \$189.72, which includes the local Fire District tax.

#### **OPINION**

Assessors are required to value and assess real estate at its fair cash value as of the first day of the January preceding the fiscal year at issue. G.L. c. 59, §§ 2A and 38. "The 'fair cash value' of real property, for tax purposes, is the price that an owner willing but not compelled to sell ought to receive from one willing but not

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<sup>1</sup> There was no evidence that Great Barrington had adopted St. 1989, c. 653, § 246, applicable to property taxes assessed for fiscal years beginning on or after July 1, 1990, which states, in pertinent part, that "in any city or town which accepts the provisions of this sentence, buildings and other things erected on or affixed to land during the period beginning on January second and ending on June thirtieth of the fiscal year preceding that to which the tax relates shall be deemed part of such real property as of January first."

compelled to buy.” **Tennessee Gas Pipeline Co. v. Bd. Of Assessors of Agawam**, 428 Mass. 261, 262 (1998). The actual sale of the subject property is very strong evidence of its fair market value because the sale represents what a buyer has been willing to pay and what a seller has been willing to accept for that particular property. See **Foxboro Associates v. 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).

In the present appeal, the Presiding Commissioner found that two recent sales of the subject property, sandwiched around the relevant valuation date, were the best evidence for determining the subject property’s fair cash value for the fiscal year at issue. The Presiding Commissioner further found that by weighting these sales according to their proximity to the relevant valuation date, he appropriately incorporated the sustained improvement to the subject property after the first sale, as well as the partial completion of the improvements as of the relevant valuation date. In this way, the Presiding Commissioner determined that the fair cash value of the subject property for the fiscal year at issue was \$287,500.

"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 Co.**, 309 Mass. 60, 72 (1941). The Board is not required to believe the testimony of any particular witness, but can accept those portions of the evidence which appear to have more convincing weight. **McCabe v. Assessors of Provincetown**, 402 Mass. 728, 733 (1988). The taxpayer has the burden of proving overvaluation of real property. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974).

On this basis, the Presiding Commissioner found and ruled that the appellant met his burden of proving that the subject property was overvalued for the fiscal year at issue. The Presiding Commissioner, therefore, decided this appeal for the appellant and granted a tax abatement in the amount of \$189.72.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas J. Mulhern, Commissioner

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board