

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RICHARD AND ELEANOR
BAUMANN

v.

BOARD OF ASSESSORS OF
THE TOWN OF MARSHFIELD

Docket No. F298167

Promulgated:
October 9, 2009

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 appellee to abate a tax on real estate in the Town of Marshfield, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2008.

Commissioner Egan ("Presiding Commissioner") heard the appeal and issued a single-member decision for the appellee in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

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

Richard and Eleanor Baumann, pro se, for the appellants.

Elizabeth Bates, Assessor, for the appellee.

FINDING OF FACT AND REPORT

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

On January 1 2007, Richard and Eleanor Baumann ("appellants") were the assessed owners of the subject property located at 60 Preston Terrace in Marshfield, Massachusetts ("subject property" or "subject"). The Board of Assessors of the Town of Marshfield ("appellee") valued the subject property for fiscal year 2008 ("fiscal year at issue") at \$788,200 and assessed a tax thereon in the total amount of \$6,873.10. The appellants timely paid the tax in full without incurring interest.

The appellants applied for an abatement on January 29, 2008, claiming that the subject property should have been valued at \$596,500. As a result of an inspection of the subject property on March 5, 2008, the appellee made some minor adjustments to the building data on the subject's property record card. On April 28, 2008, the appellee granted a partial abatement in value of \$7,300 for the building, reducing the subject property's assessment to \$780,900 and abating the tax by \$63.65. The appellants seasonably filed their petition with the Appellate Tax Board ("Board") on July 23, 2008. Accordingly, the

Presiding Commissioner found and ruled that the Board has jurisdiction to hear and decide this appeal.

The subject property is located in a desirable neighborhood with stable property values, within a short drive of local shopping, schools, and parks, and within driving distance of beaches, boating, and good recreational areas. The subject property's locale is also within easy access of major highways and connecting roadways. The property record card indicates that the subject is located in a neighborhood classified as RF1, which is the appellee's code for "Riverfront Good." The subject property overlooks the South River, Atlantic Ocean and Fourth Cliff in Humarock.

The subject property consists of a 13,280-square-foot parcel of land improved with a single-family, one-story ranch built in 1950 with a subsequently added half story, which together create a one-and-one-half-story, contemporary-style dwelling. The exterior of the home is wood shingles and has an asphalt gable roof. It is equipped with 100-amp electrical service and a forced-hot-water gas-heating system. The subject property receives public water but has a private septic system. It contains 2,470 square feet of living area, with a total of 7 rooms above grade, including 3 bedrooms, as well as one full

bathroom and two three-quarter bathrooms. The main floor features hardwood flooring and the second floor is carpeted. The subject home also includes a full basement, which is about 25 percent finished and includes another three-quarter bathroom. Other features of the subject home include a fireplace in the living room, a wooden deck off the family room, an attic, an enclosed porch, an open-framed porch, and a 288 square-foot carport, which was added in 1988. The property record card indicates that, in the opinion of the appellee, the subject property is in "good" condition.

The appellants presented their case through the testimony of Mr. Baumann and an appraisal report prepared by a professional appraiser, Mark Wolpers, who was not present and thus did not testify at the hearing of this appeal.¹ Mr. Wolpers' appraisal report cites sales of six comparable properties. Of the six comparable-sale properties cited, three are less than a mile away and in the same neighborhood as the subject property. The other three comparable-sale properties are 2 miles, 3 miles, and almost 5 miles away from the subject property; two of the comparable-sale properties are not waterfront or waterview

¹ Because he was not present at the hearing and was, therefore, unavailable for cross-examination by the assessors, the Presiding Commissioner gave no weight to Mr. Wolpers' opinion of value.

properties, and five of the comparable-sale properties are not RF1 properties. After adjustments to his comparable-sale properties, Mr. Wolpers arrived at a range of adjusted sale prices from \$595,248 to \$736,990. He arrived at a final estimate of value of \$655,000, which is toward the middle of his range of adjusted values.

The comparable property with the highest adjusted sale price, 106 Preston Terrace, is located on the same street as the subject property. In Mr. Wolpers' opinion, 106 Preston Terrace has a superior riverfront/oceanfront view in comparison to the subject property. The 106 Preston Terrace property consists of a 10,800-square foot parcel of land improved with a Colonial-style dwelling with a gross living area of 1,664 square feet. The exterior of the comparable property's home is wood shingles and it has an asphalt gambrel roof. Mr. Wolpers' appraisal report states that the home contains a total of 8 rooms above-grade, including 3 bedrooms, as well as 2 full bathrooms and one half bathroom.² The basement is full but unfinished. Like the subject property, the comparable property's amenities include one fireplace, an enclosed porch, and an open deck. The home has forced-air heating powered by gas, but unlike

² The property record card for 106 Preston Terrace states that the home has a total of 6 rooms.

the subject property, it also is equipped with central air conditioning. This comparable property was sold on July 7, 2006 for \$775,000.

Mr. Baumann testified that, in his opinion, 106 Preston Terrace is a "misleading" comparable, because it was on the market for only four days and thus did not have proper exposure to the market. This comparable property sold for its full asking price. The appellants claimed it was potentially not an arm's-length transaction but provided no evidence to support this assertion.

Elizabeth Bates, an Assessor for the Town of Marshfield, appeared and testified on behalf of the appellee. She presented two comparable sales coded as RF1 properties -- 106 Preston Terrace, discussed above, and 99 Grandview Avenue -- both in the same neighborhood as the subject. Like Mr. Wolpers, Ms. Bates also relied upon the July 7, 2006 sale of 106 Preston Terrace for \$775,000.³

Ms. Bates' second comparable property, 99 Grandview Avenue, sold on August 15, 2008 for \$907,500. This comparable property consists of a 30,600-square-foot parcel of land improved with a Colonial-style dwelling, with an extra half floor, and a gross living area of 3,848 square

³ See narrative above for full description of 106 Preston Terrace, including note 2, *infra*.

feet. Like the subject, the exterior of the comparable property's home is wood shingles and has an asphalt gable roof. The home contains a total of 8 rooms above-grade, including 4 bedrooms, as well as 2 full bathrooms and 1 half bathroom. The basement is full and completely finished. The comparable property's amenities include one fireplace, a woodstove, an open-frame porch, an open deck, a 240-square foot shed, and a 360-square foot garage. The home has forced-hot-air heating and it also is equipped with central air conditioning. In her comparable-sales analysis, Ms. Bates noted that a time adjustment of 0.95 percent was appropriate to account for the sale date. She detailed no other adjustments.

Ms. Bates also cited two RF1 comparable assessments -- 46 Preston Terrace and 109 Grandview Avenue -- both in the same neighborhood as the subject property. The first comparable property, 46 Preston Terrace, is an 8,800-square-foot parcel of land improved with a Colonial-style dwelling with 3,711 square feet of living space, which contains a total of 6 rooms, including 3 bedrooms, as well as 1 full bathroom and 1 half bathroom. Other amenities include two fireplaces, an attic, a deck, and a 300-square-foot garage. It was assessed at \$835,800 for the fiscal year at issue. The second comparable property, 109

Grandview Avenue, is a 1.29-acre parcel of land improved with a two-and-three-quarter-story, Colonial-style dwelling with 2,500 square feet of living space, which contains a total of 6 rooms, including 3 bedrooms, as well as 2 full bathrooms and 1 half bathroom. Other amenities include a fireplace, a woodstove, a deck, an open porch, and a garage, as well as central air conditioning. It was valued at \$819,600 for the fiscal year at issue. Ms. Bates's analysis did not detail any adjustments to her comparable assessments.

On the basis of the all of the facts, the Presiding Commissioner found that, contrary to the appellants' argument, the sale of 106 Preston Terrace was probative evidence of the fair cash value of the subject property. The Presiding Commissioner found that the appellants' contention that the sale may not have been arm's-length was speculative at best, because the appellants provided no credible evidence that the sale was not at arm's length. The Presiding Commissioner further found that this comparable-sale property, located in the same neighborhood and on the same street as the subject property, was a persuasive indicator of value. The Presiding Commissioner found that 106 Preston Terrace's sale price of \$775,000, five months before the relevant assessment date, supported

the subject assessment of \$780,200. Moreover, the other comparables cited by Mr. Wolpers were not located in the same neighborhood as the subject property, were not classified as RF1 properties, and were not shown to be sufficiently comparable to the subject property to be probative of its value. The Presiding Commissioner thus found that the appellants failed to meet their burden of proving that the subject assessment was excessive.

Accordingly, the Presiding Commissioner issued a decision in favor of the appellee in this appeal.

OPINION

Assessors are required to assess real estate at its fair cash value as of the first day of January preceding the fiscal year at issue. G.L. c. 59, §§ 11 and 38. The fair cash value of a property is defined as the price upon which a willing buyer and a willing seller would agree if both are fully informed and under no compulsion. ***Boston Gas. Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The burden of proof is upon the taxpayer to make out a right to an abatement. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The assessment is presumed to be valid unless the taxpayer meets its burden of proving otherwise. ***Id.*** A right to an abatement can be

proven by either introducing evidence of fair cash value, or by proving that the assessors erred in their method of valuation. **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984).

"[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 generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2008-321, 400 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, **Graham v. Assessors of West Tisbury**, 73 Mass. App. Ct. 1107 (2008).

In the instant appeal, the appellants' expert, Mr. Wolpers, cites six purportedly comparable properties. Five of his comparable-sale properties are not in the same neighborhood as the subject property and are not classified as Rf1 properties. The Presiding Commissioner found and ruled that these properties' different classifications and

neighborhood influences compromised their comparability with the subject.

However, both the appellants' expert and the appellee relied on the sale of 106 Preston Terrace. The Presiding Commissioner agreed with the parties that 106 Preston Terrace was comparable to the subject property. Further, the Presiding Commissioner found and ruled that the appellants failed to produce credible evidence that this sale was not an arm's-length sale; therefore, the sale price was probative evidence of the fair cash value of the subject property. The Presiding Commissioner further found and ruled that this property is highly comparable to the subject, as it is located in the same neighborhood, even on the same street, and thus with the same neighborhood influences on value as the subject property. Moreover, like the subject, it is also classified as an RF1 property. The Presiding Commissioner found and ruled that this comparable's sale price of \$775,000, five months before the relevant assessment date, supported the subject assessment of \$780,200.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellants did not meet their burden of proving that the subject property's assessment was excessive. On this basis, the Presiding

Commissioner issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Nancy T. Egan, Member

A true Copy:

Attest: _____
Clerk of the Board