

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CHARLOTTE SANFORD MASON

v.

BOARD OF ASSESSORS OF
THE TOWN OF BROOKLINE

Docket No. F270548

Promulgated:
May 4, 2005

This is an appeal filed under the formal procedure for fiscal year 2003 pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes assessed on real estate located in the Town of Brookline owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38.

Commissioner Egan heard the appeal and was joined in a decision for the appellant by Commissioners Scharaffa, Gorton, and Rose.

These findings of fact and report are promulgated at the request of the appellee pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

Alan Garber, Esq., for the appellant.

Linda MacDonald, Assessor and Damian Johnson, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2002, Charlotte Sanford Mason was the assessed owner of a parcel of real estate located at 115 Sargent Road in the Town of Brookline ("subject property"). The subject property is a 1.5-acre parcel of real estate improved with a two-story dwelling. For fiscal year 2003, the Brookline Board of Assessors ("assessors") valued the subject property at \$3,281,500, less a residential exemption of \$127,220, for a total taxable value of \$3,154,280, and assessed a tax thereon, at the rate of \$11.21 per thousand, in the amount of \$35,359.48. The appellant paid the taxes due without incurring interest. On January 31, 2003, the appellant timely filed an application for abatement with the assessors which was denied on April 15, 2003. On June 30, 2003, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board"). Based on these facts, the Board found that it had jurisdiction over this appeal.

The subject property is located in the estate area of Brookline, identified on the assessors' map as Neighborhood 101. Zoning for the area requires minimum lot sizes between 15,000 and 40,000 square feet. Within Sargent Estates, the subject property's locale, there are wetlands owned by the Trustees of Sargent Estates and many parcels

have deed restrictions which are also controlled by the Trustees. The dwelling on the subject property is a two-story, brick, Colonial-style home with a total living area of 4,710 square feet. The house has a total of ten rooms, including six bedrooms. There are four full-bathrooms and two half-bathrooms. The home also has three fireplaces, central air conditioning, and is in good condition overall.

To prove her claim of disproportionate assessment, the appellant called to testify Linda MacDonald, Assistant Assessor for Brookline. Ms. MacDonald testified that the computer model used to determine a particular property's assessed value gives greater weight to certain characteristics compared to others, including, living area, quality of the bath(s) and kitchen, and overall condition and quality of the house. In particular situations, adjustments are made to a property's assessed value depending upon information presented to the assessors by the property owner. Ms. MacDonald also testified that parcels of real estate located in different neighborhoods may have different assessed land values attributable to benefits of a particular location. She further noted that the estate area of Brookline, including Sargent Estates, is one of the neighborhoods for which properties are assigned a greater per-square-foot land value.

The appellant's husband, Philip Mason, also testified to support the appellant's claim of over-valuation. After looking at other properties in close proximity to the subject property, Mr. Mason concluded that the property located at 21 Sargent Crossway, directly across from the subject property, is most comparable in terms of location, living area, land area and condition. The comparable property has a land area of 50,687 square feet improved with a single-family dwelling with a total living area of 5,592 square feet. The home has a total of thirteen rooms, including seven bedrooms, six full-bathrooms and one half-bathroom, and is listed as being in very good condition. This property was assessed at \$2,613,900, \$667,600 less than the subject property.

Mr. Mason also compared the subject property's assessment to that of 36 Codman Road. This comparable was built by the same developer as the subject property with an identical layout, and is located approximately three hundred yards from the subject property. The lot is 46,397 square feet in area and the dwelling, which has had an addition added since it was first built, has a total living area of 6,016 square feet, approximately one-quarter larger than the subject property. The house has a total of fourteen rooms, including nine bedrooms, four full-

bathrooms and one half-bathroom. Like the subject property, the house has three fireplaces and central air-conditioning. Despite the similarities with the subject property, and the larger living area, this property was assessed for only \$2,464,000, \$690,280 less than the subject property.

Finally, the appellant noted that in her fiscal year 2000 appeal, this Board reduced the subject property's assessed valuation from \$1,998,600 to \$1,750,000. No appeal was filed for fiscal year 2001. For fiscal year 2002, the parties agreed to a reduction in the subject property's assessed value from \$2,502,500 to \$2,302,500. The subject property's assessed value for fiscal year 2003 increased by approximately forty-two percent from the prior fiscal year, compared to only a thirty-percent increase for the property located at 21 Sargent Crossway. Also, the subject property's assessed value for the fiscal year at issue is nearly doubled the value found by the Board in its decision for fiscal year 2000, compared to only a sixty-four percent increase for the property located at 21 Sargent Crossway.

In support of their assessment, the assessors offered the testimony of Linda MacDonald, Assistant Assessor. Regarding the appellant's first comparable, 21 Sargent

Crossway, Ms. MacDonald noted that the property has less land but more living area than the subject property. She also testified that this property is a "framed construction" and of a lesser quality than the subject property. Ms. MacDonald did not, however define this term and why it is inferior to the subject property's construction. She further testified that these factors, taken together, account for the differences in assessed values.

Ms. MacDonald also reviewed sales of properties in the estate area with an acre or more of land. She chose three properties which she deemed comparable to the subject property. First, 77 Heath Street, is a 40,987 square-foot lot improved with a dwelling that has a living area of 6,670 square feet. The property sold in June 2001 for \$2,685,000. The next sale, 124 Heath Street, is a 52,916 square-foot lot improved with a dwelling with 8,457 square feet of living space. The property sold in December 2001 for \$4,275,000. The final sale, 55 Singletree Road is a 47,778 square-foot lot improved with a dwelling with a living area of 5,287 square feet. The property sold in July 2002 for \$3,900,000.

Ms. MacDonald determined that the property at 55 Singletree Road was most similar in size and location

compared to the subject property. She further noted, however, that this is a "framed house," not as nice as the subject property and of lesser quality. Therefore, she concluded, if someone would pay \$3,900,000 for a lesser home, they would surely pay \$3,300,000 for the subject property.

Ms. MacDonald also presented sales of brick homes located on Fisher Hill, Brookline, another exclusive area of town. The first sale, 364 Buckminster, is a 63,000 square-foot lot with a burn-out building that sold for \$2,225,000 in May 2002. The next sale, 154 Hyslop Road, is a 28,000 square-foot lot improved with a dwelling with 5,870 square feet of living area. The property was sold by Newbury Junior College in April of 2003 for \$2,000,000. The final sale, 529 Chestnut Avenue, is a brick house also previously owned by a school, New England Hebrew Academy. The property was sold by the school in March 2003 for \$3,000,000. Based on these sales, Ms. MacDonald again testified that the subject property's assessed value of \$3,281,500 "seems correct."

On cross-examination, Ms. MacDonald noted that there are differences between her cited properties and the subject property. She did not, however, provide an analysis as to how these differences impacted the

properties' selling prices and the subject property's fair market value. Ms. MacDonald also noted that the two properties which she deemed most comparable, 55 Singletree Road and 529 Chestnut Hill Avenue, sold six and fourteen months after the relevant assessment date of January 1, 2002.

Regarding the appellant's comparable at 36 Codman Road, Ms. MacDonald testified that the difference in assessed valuation compared to the subject property, nearly \$700,000, was attributable to the smaller land area and the lesser quality and condition of the home. She acknowledged, however, that given the dollar value for residual land of \$7.28, the difference in lot sizes would only calculate to about \$150,000. The remaining difference, she opined, would be attributable to the larger living area, lesser quality and condition and maybe "other factors," none of which she provided.

On the basis of the subsidiary findings of fact, the Board found that the appellant failed to prove that the subject property was disproportionately assessed. The appellant failed to offer any evidence to show that there was an intentional scheme of discriminatory, disproportionate assessment or that there existed an intentional policy or scheme of valuing properties or

classes of properties at a lower percentage of fair cash value than the appellant's property.

Because there were no sales of comparable properties to contradict the appellant's evidence of comparable assessments, the Board relied on the assessments as the most persuasive indicia of value. The Board found that the evidence presented by the appellant was sufficient support for her proposition that the subject property was overvalued. The Board found that the assessments cited by the appellant for 21 Sargent Crossway, located directly across from the subject property, and 36 Codman Road, built by the same developer and located approximately three hundred yards from the subject property, were relevant persuasive evidence of value. The Board noted that the cited properties had smaller lot sizes than the subject property, but both had considerably more living area than the subject property. Despite the comparability with the subject property, the two cited properties were assessed \$667,600 and \$690,280, respectively, less than the subject property. The Board further found that the assessors failed to establish comparability between the sales they cited and the subject property. The Board also found that the assessors failed to adequately account for and analyze existing differences between the cited sales and the

subject property and the effects on the subject property's fair cash value

On the basis of the foregoing, the Board found that the fair cash value of the subject property was \$2,900,000. Accordingly, the Board issued a decision for the appellant and granted an abatement in the amount of \$4,276.62.

OPINION

The assessors have the statutory and constitutional obligation to assess all real property at its full and fair cash value. Part 2, C. one, section one, article 4, of the Constitution of the Commonwealth; Article 10 of the Declaration of Rights; G.L. c. 59, §§ 38 and 52. See *Coomey v. Assessors of Sandwich*, 367 Mass. 836, 837 (1975) (citations omitted). Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. *Boston Gas Company v. Assessors of Boston*, 334 Mass. 549, 566 (1956).

The Board is entitled to presume that the assessment is valid until the taxpayer sustains his burden of proving otherwise. *Schlaiker v. Board of Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). Accordingly, the burden of proof is upon the taxpayer to make out his right

as a matter of law to an abatement of the tax. *Id.* The taxpayer must demonstrate that the assessed valuation of her property was improper. See ***Foxborough Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 691 (1982).

If a taxpayer can demonstrate in an appeal to the Board that he has been the victim of a scheme of discriminatory, disproportionate assessment, he "may be granted an abatement . . . which will make . . . his assessment proportional to other assessments, on a basis which reaches results as close as is practicable to those which would have followed application by the assessors of the proper statutory principles." ***Coomey***, 367 Mass. at 836 (quoting ***Shoppers' World, Inc. v. Assessors of Framingham***, 348 Mass. 366, 377-78 (1965)). See also ***Brook Road Corporation v. Board of Assessors of Needham***, 2001 ATB Adv. Sh. 648, 658 (Docket No. F240871, August 20, 2001); ***Gargano v. Assessors of Barnstable***, 2003 ATB Adv. Sh. 501, 531-532 (Docket Nos. F250893, et al., September 10, 2003). The burden of proof as to existence of a "scheme of discriminatory, disproportionate assessment" is on the taxpayer. ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 559 (1971); see also ***Schlaiker***, 365 Mass. at 245.

"In order to obtain relief on the basis of disproportionate assessment, a taxpayer must show that there is an 'intentional policy or scheme of valuing properties or classes of properties at a lower percentage of fair cash value than the taxpayer's property.'" **Brown v. Assessors of Brookline**, 43 Mass. App. Ct. 327, 332 (1997) (quoting **Shoppers' World**, 348 Mass. at 377). If a taxpayer successfully demonstrates improper assessment of such a number of properties to establish an inference that such a scheme exists, the burden of going forward to disprove such a scheme shifts to the assessors. **Shoppers' World**, 348 Mass. 366, 377 (1965). "The ultimate burden of persuasion, of course, will remain upon the taxpayer." **First National Stores**, 358 Mass. at 562.

In the present appeal, the appellant only analyzed a minimal number of properties, sales, and assessments for fiscal year 2003. The finding of a widespread scheme would require far more data and analysis among classes of property or groups of taxpayers than that supplied by the appellant. The Board found no evidence or inference of an intentional or deliberate scheme of disproportionate assessment on the part of the assessors. Accordingly, the Board ruled that the appellant had failed to meet her

burden in showing that a deliberate scheme of disproportionate assessment existed in this appeal.

Where assessments, even if wrong, are "consistent with honest mistake or oversight on the part of assessors" as opposed to a "deliberate scheme of disproportionate assessment" no relief for disproportionate assessment is appropriate. **Brown v. Assessors of Brookline**, 18 App. Tax Bd. Rep. 83, 92 (Docket Nos. 145188, etc., February 9, 1996), *aff'd*, 43 Mass. App. Ct. 327 (1997) (quoting **Stilson**, 385 Mass. 724, 728 (1981)). "To the extent that there is an error in determining fair cash value in a given year due to the assessors' use of a value certified [by the Commissioner of Revenue], the appropriate remedy is an abatement claim based on overvaluation, not on disproportionate assessment." **Brown** at 87. See also **Armitage, et al v. Assessors of Concord**, 2004 ATB Adv. Sh. 334, 346 (Docket No. F266343, et al, October 13, 2004) ("shortcomings in the assessors' valuation of a particular property are appropriately addressed by claims for overvaluation and not for disproportionate assessment.").

Therefore, to sustain a claim for abatement, a taxpayer must prove that the assessed valuation of his or her property was improper. See **Foxboro Associates**,

385 Mass. at 691. 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. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984) (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

"At any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible." G.L. c. 58A, § 12B. "The admissibility under G.L. c. 58A, § 12B, of evidence of assessments imposed on other property claimed to be comparable in nature to the subject property is largely a matter within the discretion of the [B]oard." **Board of Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972), citing **Leen v. Assessors of Boston**, 345 Mass. 494, 506 (1963). In this appeal, because there was no evidence of truly comparable sales information on which to rely, the Board ruled that the appellant presented sufficient evidence of comparable assessments to support her contention that the subject property was overvalued.

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. at 683; ***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. at 701-702. An owner of property is entitled to express his or her opinion of its value during the relevant time period if he or she is experienced in dealing with the property, is familiar with its characteristics, and recognizes its proper uses or potential uses. ***Menici v. Orton Crane & Shovel Co.***, 285 Mass. 499, 503-504 (1934), and the cases cited therein. ***Accord Correia v. New Bedford Redevelopment Authority***, 5 Mass. App. Ct. 289, 295 (1977), *rev'd on other grounds*, 375 Mass. 360 (1978). In this appeal, the Board ruled that the appellant and her husband possessed the requisite familiarity, knowledge, and experience about their home to express their opinion of its value. Accordingly, the Board considered the appellant's opinion of the subject

property's value in conjunction with the other evidence that the appellant presented.

In evaluating the evidence before it in this appeal, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. See **General Electric v. Assessors of Lynn**, 393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984).

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, the inferences to be drawn from the evidence are matters for the [B]oard." **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

In the present appeal, the Board found that the appellant met her burden of proving that the subject property was over-assessed for fiscal year 2003. Therefore, the Board issued a decision for the appellant in this appeal.

THE APPELLATE TAX BOARD

By: _____ Chair

_____ Commissioner
_____ Commissioner
_____ Commissioner
_____ Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board