

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CENTRE AVENUE REAL
ESTATE TRUST, GEORGE W.
BETTS, TRUSTEE

v. BOARD OF ASSESSORS OF
THE TOWN OF PLYMOUTH

Docket No. F296697

Promulgated:
December 30, 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 the appellee to abate real estate tax assessed to Centre Avenue Real Estate Trust, George W. Betts, Trustee ("appellant") under G.L. c. 59, §§ 11 and 38 by the Town of Plymouth for fiscal year 2008.

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

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.

George W. Betts, pro se, for the appellant.

Catherine Salmon, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2007, the appellant was the assessed owner of two contiguous parcels of real estate located at 3 Centre Avenue and 5 Centre Avenue, in the Town of Plymouth ("subject properties"). Three Centre Avenue contains approximately 3,920 square feet of land and is improved with a one-story, cottage-style dwelling. The dwelling contains a total living area of 610 square feet which includes a total of five rooms, including three bedrooms, as well as one bathroom. This parcel is identified as plot 021 on map 045A by the Board of Assessors of Plymouth ("assessors").

Five Centre Avenue contains approximately 4,356 square feet of land and is improved with two structures. Structure #1 is a three-room, cottage-style dwelling with a total living area of 356 square feet, which includes one bedroom and also one bathroom. Structure #2 is a one-and-a-half story structure with a total living area of 1,014 square feet, also a cottage-style dwelling which includes a total of five rooms, including three bedrooms, and also one full bathroom. This parcel is identified by the assessors as plot 022 on map 045A.

For fiscal year 2008, the assessors assessed the properties at \$177,300 and \$201,300, respectively, and assessed taxes thereon, at the rate of \$10.33 per thousand,

in the corresponding amounts of \$1,831.51 and \$2,079.43. On January 23, 2008, in accordance with G.L. c. 59, § 59, the appellant timely filed its abatement applications with the assessors, which were denied on March 18, 2008. Subsequently, on June 16, 2008, the appellant seasonably filed a single appeal with the Appellate Tax Board ("Board") contesting the valuation of both parcels.¹ On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over the fiscal year 2008 appeal.

The property located at 5 Centre Avenue was transferred into the Five Centre Avenue Real Estate Trust on September 10, 1998. The property located at 3 Centre Avenue was transferred into the Five Centre Avenue Real Estate Trust on September 2, 2005. At the same time, the trust was renamed The Centre Avenue Realty Trust, as recorded in Plymouth County Registry of Deeds, Book 31274, Page 350. The appellant testified that, pursuant to the town of Plymouth's land schedule table, his two lots of 3,920 square feet and 4,356 square feet, are valued and taxed at a higher per-square-foot value than a single parcel of 8,276 square feet, the combined area of the two subject parcels.

¹ Pursuant to G. L. c. 58A, § 7, the Board allowed the taxpayer to join the adjacent parcels on a single petition. See *Jerome Phifer v. Assessors of Cohasset*, 28 Mass. App. Ct. 552 (1990).

On July 7, 2006, the appellant requested that the subject properties be combined for tax assessment and billing purposes, which, the appellant argued, would result in a significant tax savings. On July 11, 2006, the assessors notified the appellant that the subject properties could not be combined onto one tax bill because title to both parcels of land was obtained on two separate deeds. The appellant then transferred both parcels into The Centre Avenue Realty Trust on a single deed and renewed his request to join the two parcels for tax purposes. On September 19, 2006, after further review of the appellant's request, the assessors notified the appellant that because there were cottages on each parcel of land, it was the assessors' policy not to combine the lots for tax assessment and billing purposes.

Based on the evidence presented, the Presiding Commissioner found that the appellant did not meet his burden of proving that the subject properties' fiscal year 2008 assessments were in excess of their fair market value. The appellant's only argument in the present appeal is that by valuing and taxing the two adjacent subject properties as two separate parcels, rather than as a single parcel of 8,276 square feet, the subject properties were overvalued.

The appellant offered no legal basis to support his argument that the parcels should be combined for assessment

purposes. The Presiding Commissioner found on this record that the assessors were justified in assessing the two parcels separately. Further, it is an appropriate practice for assessors to consider size differences in valuing property. As stated in APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (13th ed. 2008): "Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase." *Id.* at 212. Moreover, the appellant did not offer any comparable sales data or any other affirmative evidence of overvaluation.

On the basis of all the evidence, the Presiding Commissioner found and ruled that the appellant failed to prove that the subject properties were overvalued for fiscal year 2008. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. Assessors have a statutory obligation to assess real estate at its fair cash value as of the first day of January of the year preceding the fiscal year at issue. G.L. c. 59 §§ 11 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 neither is under compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The taxpayer has the burden of proving that the subject property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The assessment is presumed to be valid unless the taxpayer is able to sustain his or her burden of proving otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. at 591, 598 (1984) (citing ***Schlaiker***, 365 Mass. at 245). The taxpayer may sustain this burden by introducing evidence of fair cash value, or by proving that the assessors erred in their method of valuation. ***General Electric Co.***, 393 Mass. at 600.

In the present appeal, the appellant argued that the subject properties were overvalued because they were taxed at a higher per-square-foot rate than larger parcels and because the assessors refused to combine the two lots onto a single parcel for tax billing purposes. The Presiding Commissioner recognized that all other things being equal, smaller properties ordinarily have a higher value per square foot than larger ones. See APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE at 212; ***Finigan v. Assessors of Belmont***, Mass. ATB Findings of Fact and Reports 2004-533, 537 ("One cannot take a unit

of value for a given parcel and apply that unit value to increase the value of a larger parcel or decrease the value of a smaller one."). Further, the appellant cited no legal requirement that adjacent parcels be joined for assessment purposes. Moreover, the appellant presented no comparable sales data or affirmative evidence of overvaluation.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellant failed to prove that the subject property was overvalued for fiscal year 2008. Accordingly, the Presiding Commissioner issued a single-member decision for the appellee in this appeal.

APPELLATE TAX BOARD

By: _____
James D. Rose, Commissioner

A true copy,

Attest: _____
Clerk of the Board