

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SHAWN K. & CYNTHIA M. AHEARN v. BOARD OF ASSESSORS OF  
THE TOWN OF WESTMINSTER

Docket No. F299057

Promulgated:  
June 25, 2010

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 Board of Assessors of the Town of Westminster ("assessors"), to abate taxes on certain real estate located in the Town of Westminster, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2009.

Commissioner Rose ("Presiding Commissioner") heard this appeal and issued a single-member decision for the assessors 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 appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Sean K. Ahearn, pro se, for the appellants.*<sup>1</sup>

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<sup>1</sup> No representative appeared on behalf of the assessors.

## **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, 2008, Shawn K. and Cynthia M. Ahearn ("appellants") were the assessed owners of an improved parcel of real estate located at 8 Leominster Street in Westminster ("subject property"). For fiscal year 2009, the assessors valued the subject property at \$408,800 and assessed a tax thereon, at a rate of \$13.00 per \$1,000, in the amount of \$5,314.40. In accordance with G.L. c. 59, § 57C, the appellants paid the tax due without incurring interest, and in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors. The assessors granted a partial abatement on February 10, 2009, in the amount of \$369.20, having reduced the subject property's assessed value to \$380,400. On February 23, 2009, the appellants seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to decide this appeal.

The subject property consists of a 0.34-acre parcel of real estate improved with a single-family, antique Colonial-style home containing 3,204 square feet of

finished living area.<sup>2</sup> The dwelling consists of eight rooms, including five bedrooms as well as two full bathrooms.

The appellants argued that the subject property was overvalued for fiscal year 2009. In support of their argument, the appellants submitted limited data regarding sales of thirteen properties, five of which sold during 2007 and eight of which sold during 2008. In addition, three of the thirteen properties are located outside Westminster. Although the data included each property's address, sale price, and living area, crucial information was lacking. Specifically, the appellants presented no evidence relating to the desirability of each property's location, the style or condition of the dwellings situated on the purportedly comparable properties, or the physical attributes of each parcel. Lacking this information, the Presiding Commissioner could not determine if the properties were comparable to the subject property, much less consider adjustments to account for differences between the properties and the subject property.

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<sup>2</sup> In a self-prepared submission, the appellants list the dwelling on the subject property as having 2,948 square feet of living area. The property record card for the subject property, also submitted by the appellants, indicated that the dwelling contains 3,204 feet of living area. During the hearing of the appeal, the appellants made no effort to account for this disparity. Given the specificity with which the property record card delineates living area, and the absence of testimony or documentary evidence to support an assertion of less living area, the Presiding Commissioner accepted the property record card as accurately reflecting the dwelling's living area.

Consequently, the Presiding Commissioner found that the sales data presented by the appellants were not sufficiently probative to establish the subject property's fair cash value.

The appellants also submitted property record cards for purportedly comparable properties to support their assertion that the subject property's assessed value was excessive relative to these properties' assessed values. The Presiding Commissioner found, however, that this evidence supported rather than undermined the value placed upon the subject property by the assessors. In particular, of the cited properties, the Presiding Commissioner found that the property at 6 Leominster Street, the assessed value of which was \$331,100 for fiscal year 2009, was most comparable to the subject property. Like the subject property, the dwelling at 6 Leominster Street is an antique Colonial-style home. Its living area is 2780 square feet, approximately thirteen percent smaller than the dwelling on the subject property. The property record card for 6 Leominster Street also indicates that the parcel size is 0.23-acres, approximately one-third smaller than the subject property's parcel. Finally, the dwelling on the subject property was in slightly better condition than the dwelling at 6 Leominster Street.

In sum, the property at 6 Leominster Street was somewhat smaller than the subject property, its dwelling was in poorer condition, and its 2009 assessed value was approximately thirteen percent lower than the subject property's assessed value. The Presiding Commissioner found that the difference between the properties' assessed values was wholly consistent with the differences between the properties themselves, and therefore the assessment data relating to 6 Leominster Street supported the assessed value of the subject property. Moreover, the Presiding Commissioner found that the balance of the properties for which the appellants submitted property record cards were sufficiently distinct in style, size and condition relative to the subject property to render comparison with the subject property less probative than comparison with 6 Leominster Street.

Having considered all of the evidence, the Presiding Commissioner found that the sales-comparison data presented by the appellants were not adequate to establish the fair cash value of the subject property, and the comparable-assessment evidence supported the subject property's assessed value. The Presiding Commissioner therefore found that the appellants failed to meet their burden of demonstrating that the subject property's assessed value

exceeded its fair cash value for fiscal year 2009. On this basis, the Presiding Commissioner issued a decision for the assessors in this appeal.

#### OPINION

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. The definition of fair cash value is the price upon which a willing buyer and a willing seller would agree if both were fully informed and neither was under 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 as a matter of law. ***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. ***Id.*** The taxpayer may sustain this burden by introducing affirmative 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. 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*, 73 Mass. App. Ct. 1107 (2008). When comparable sales are used, however, allowances must be made for various factors which would otherwise cause disparities in the comparable property's sale prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082. "Adjustments for differences in the elements of comparison are made to the price of each comparable property . . . . The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE, 322 (13<sup>th</sup> ed., 2008).

In the present matter, the appellants submitted certain data relating to sales of purportedly comparable properties in support of their assertion that the subject property's assessed value exceeded its fair cash value. This data, however, was not sufficient to establish the subject property's fair cash value. In particular, the appellants did not present evidence of the desirability of each property's location, the style or condition of the dwellings situated on the purportedly comparable properties, or the physical attributes of each parcel. Absent this information, the Presiding Commissioner could not determine if the properties were comparable to the subject property. Neither could adjustments be made to account for differences between the properties and the subject property. Consequently, the Presiding Commissioner found that the comparable-sales data presented by the appellants were not sufficiently probative to constitute affirmative evidence of the subject property's fair cash value.

G.L. c. 58A, § 12B provides in pertinent part that "at any hearing relative to the assessed fair cash valuation or classification of property, evidence as to fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or

class shall be admissible." "The introduction of such evidence may provide adequate support for either the granting or denial of an abatement." **John Alden Sands, et al. v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07, (citing **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308.) (other citations omitted).

The Presiding Commissioner allowed into evidence various property record cards for purportedly comparable properties, which the appellants had submitted to bolster their argument that the subject property's assessed value was excessive. The Presiding Commissioner found, however, that this comparable-assessment evidence supported the value placed upon the subject property by the assessors. More specifically, the property at 6 Leominster Street, the assessed value of which was approximately thirteen percent lower than the subject property's assessed value, and which the Presiding Commissioner found most comparable to the subject property among the properties submitted for consideration, was smaller than the subject property, and its dwelling was in poorer condition. Having considered these facts, the Presiding Commissioner found that the difference between the properties' assessed values was consistent with and justified by the differences between

the properties. In turn, the Presiding Commissioner found that the assessment data relating to 6 Leominster Street supported the assessed value of the subject property. Moreover, the Presiding Commissioner found that that the assessment data for 6 Leominster Street was more probative than the data relating to other properties for which the appellants submitted property record cards.

On the basis of the evidence presented, the Presiding Commissioner found that the appellants did not provide sufficient evidence to support their claim that the subject property was overvalued. As discussed, *supra*, the appellants' comparable-sales evidence lacked crucial data, and their comparable-assessment submissions supported rather than undermined the contested assessment. The Presiding Commissioner thus found and ruled that the appellants failed to meet their burden of demonstrating that the subject property's assessed value exceeded its fair cash value for fiscal year 2009.

On the basis of the foregoing, the Presiding Commissioner issued a decision for the assessors in this appeal.

**APPELLATE TAX BOARD**

**By:** \_\_\_\_\_  
**James D. Rose, Commissioner**

**A true copy:**

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