

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MICHAEL S. LEI

v. BOARD OF ASSESSORS OF THE
CITY OF LAWRENCE

Docket No. F311598

Promulgated:
October 11, 2012

This is an appeal 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 City of Lawrence ("assessors" or "appellee") to abate taxes on certain real estate in Lawrence, owned by and assessed to Michael S. Lei ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2011 ("fiscal year at issue").

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

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.

Michael S. Lei, pro se, for the appellant.

Charles Boddy, Esq. for the appellee.

FINDINGS OF FACT AND REPORT

Based on 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, 2010, the appellant was the assessed owner of a 4,243-square-foot parcel of land improved with an owner-occupied residential duplex located at 65 Holly Street, Lawrence ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$183,000 and assessed a tax thereon, at the rate of \$13.45 per thousand, in the total amount of \$2,461.35. The appellant timely filed an Application for Abatement with the assessors on February 1, 2011, which was denied on February 25, 2011. The appellant timely filed an appeal with the Appellate Tax Board ("Board") on May 17, 2011. On the basis of these facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide this appeal.

The appellant purchased the subject property and the duplex thereon, which contains 2,432 square feet of finished living area, in 1992. The lower unit has 1,216 square feet of finished living area, including three bedrooms and one bath. The upper unit includes three bedrooms and one bath, but the appellant claimed that it had suffered fire damage in 1997 that resulted in the revocation of its Certificate of Occupancy, and that it had been uninhabitable since that time.

The appellant argued that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. In support of this argument, the appellant presented various data intended to demonstrate that the subject property was overvalued when compared to four purportedly comparable properties. He provided photographs of the subject property and the purportedly comparable properties, as well as GoogleMaps screenshots of the neighborhood in which these properties are located. The purportedly comparable properties shown in these documents were labeled with information that the appellant had apparently copied and pasted from an unknown website that provides data on the features and sale prices of properties. The unverified data purported that these properties, which included one two-unit property, two three-unit properties, and one six-unit property, had sold for between \$49,900 and \$130,000 from January 2007 to January 2011. Additionally, the appellant provided property record cards for certain properties, which he had printed from the Lawrence assessors online database.

The appellant presented no evidence of the extent or existence of the fire damage to the upper unit of the subject property, or what effect it had on the fair cash value of the property on the relevant date of assessment.

Based on the sale prices of the purportedly comparable properties and his assertion that the assessors had not

accounted for the diminished value of the subject property as a result of the alleged fire damage, the appellant concluded that the fair cash value of the subject property was \$85,820.77 for the fiscal year at issue.

For their part, the assessors rested on the presumed validity of their assessment.

The Presiding Commissioner gave little weight to the appellant's comparable-sales evidence. First, assuming that the two three-unit properties were comparable to the subject property, the Presiding Commissioner found that the appellant failed to demonstrate that they were probative of the fair cash value of the subject property. The appellant failed to make adjustments to account for the dissimilarity in number of units or other attributes of the properties relative to the subject property. Further, one of these properties was sold in a foreclosure sale, raising a question as to whether the sale was arm's-length, which was not addressed by the appellant. The Presiding Commissioner found that, standing alone, this fact substantially diminished the probative value of the sale. Similarly, the two-unit property that the appellant presented had been sold in a foreclosure sale, and was afforded little weight.

The Presiding Commissioner found that the six-unit property offered by the appellant was not comparable to the subject

property because it was significantly larger, containing three times as many units, and because the appellant presented no property record card or other evidence of its physical attributes or value. The only data the appellant presented as to the property's value was the unverified information pasted onto a GoogleMaps screenshot of the neighborhood.

In sum, the Presiding Commissioner found that the purportedly comparable properties presented by the appellant were of little probative value in determining the fair cash value of the subject property.

Finally, the Presiding Commissioner found wholly unsubstantiated the appellant's assertion that the alleged fire damage had diminished the fair cash value of the property in a way that was not accounted for in the contested assessment. The appellant failed to introduce evidence as to the existence, extent, or impact of the fire damage, and thus the Presiding Commissioner was unable to determine what if any abatement the appellant may have been entitled to based on the alleged damage.

On the basis of all of the evidence, the Presiding Commissioner found and ruled that the appellant failed to establish that the fair cash value of the subject property as of the assessment date for the fiscal year at issue was less than its assessed value. For the reasons discussed above and in the following Opinion, the Presiding Commissioner rejected the

comparable-sales evidence offered by the appellant and his assertion that the condition of the second unit rendered the assessed value of the subject property excessive. Accordingly, the Presiding Commissioner issued a single-member decision for the appellee in this appeal.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. 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 Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The assessment is presumed valid unless the taxpayer sustains the burden of proving otherwise. See ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 691 (1982); ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). 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)).

A taxpayer may support a claim of overvaluation by presenting sales of comparable realty in the same geographic area and within a reasonable time of the assessment date, which generally contain probative evidence for determining the value of the subject property. See *Olivieri v. Assessors of Egremont*, Mass. ATB Findings of Fact and Reports 2008-232, 240-41; *Graham v. Assessors of West Tisbury*, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing *McCabe v. Chelsea*, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008).

However, the appellant has the burden of establishing the comparability of the properties used in the analysis to the subject property. See *Sroka v. Assessors of Monson*, Mass. ATB Findings of Fact and Reports 2009-835, 846 (citing *Fleet Bank of Mass. v. Assessors of Manchester*, Mass. ATB Findings of Fact and Reports 1998-546, 554)). Moreover, the appellant must make adjustments for various factors which would otherwise cause disparities in the comparable prices. See *Sroka*, Mass. ATB Findings of Fact and Reports at 2009-846; *Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke*, Mass. ATB Findings of Fact and Reports 1998-1072, 1080.

In the instant case, the Presiding Commissioner found and ruled that the purportedly comparable properties that the appellant offered in support of his valuation of the subject

property were of little probative value in determining the fair cash value of the subject property.

Even assuming the comparability of the three-unit properties to the subject property, the appellant made no adjustments to account for the dissimilarity in number of units or other attributes of the properties relative to the subject property. For this reason alone, the Presiding Commissioner gave very little weight to the comparable-sales evidence of the appellant for the two three-unit properties. See **Pagano v. Assessors of Swampscott**, Mass. ATB Findings of Fact and Reports 2012-68, 79 (finding that the appellant erred by failing to apply any adjustments to the sale prices of purportedly comparable-sales properties and that this omission rendered the appellant's comparable-sales analysis unpersuasive).

Further, one of the three-unit properties was a foreclosure sale, which raises a presumption of compulsion that must be rebutted by the appellant or the sale cannot be viewed as providing reliable or persuasive evidence of fair cash value. **Id.** at 2012-79-81. The two-unit property that the appellant presented was also a foreclosure sale, and the appellant offered no evidence to rebut the presumption of compulsion for either property. Thus, the Presiding Commissioner gave these comparisons very little weight.

The Presiding Commissioner also found that the appellant did not meet his burden of showing that the six-unit property he presented, which had three times as many units as the subject property, was comparable to the subject property. Its significantly larger size and the unverified data, which was the only evidence the appellant presented in support of the property's value, were not indicative of the fair cash value of the subject property.

As a result of the foregoing, the Presiding Commissioner gave virtually no weight to the comparable-sales evidence presented by the appellant.

Finally, the Presiding Commissioner found that the appellant's assertion that alleged fire damage to the upper unit of the subject property entitled him to an abatement lacked adequate foundation. The appellant failed to demonstrate the existence, extent, or impact of such damage. Consequently, the Presiding Commissioner could not determine to what degree, if any, the subject property's fair cash value had been diminished by the claimed damage.

Based on the foregoing, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of proving that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue. The appellant failed to introduce credible evidence about the fire

damage to the subject property and introduced substantially flawed comparable-sales data, much of which was taken from unknown sources. Thus, the appellant has neither presented persuasive evidence of overvaluation nor introduced affirmative evidence of valuation that undermined the assessors' valuation. Accordingly, the Presiding Commissioner issued a single-member decision for the appellee.

APPELLATE TAX BOARD

By: _____
Nancy T. Egan, Commissioner

A true copy,

Attest: _____
Clerk of the Board