

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CHARISMA DRIVE NOMINEE TRUST V. BOARD OF ASSESSORS OF
ELIE EL SADDIK, TRUSTEE CITY OF PITTSFIELD

Docket No. F288736

Promulgated:
July 31, 2008

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 City of Pittsfield ("assessors" or "appellee") to abate taxes on certain real estate located in Pittsfield owned by and assessed to Charisma Drive Nominee Trust, Elie El Saddik, Trustee ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2007.

Commissioner Mulhern ("Presiding Commissioner") heard the appeal and, pursuant to G.L. c. 58A, § 1A and 831 CMR 1.30, issued a single-member decision for appellee.

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

Elie El Saddik, pro se, for appellant.

Kelly Baumert, assessor, for appellee.

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 2006, appellant was the assessed owner of a parcel of real estate located at 10 Charisma Drive in the City of Pittsfield ("subject property"). For fiscal year 2007 ("fiscal year at issue"), the assessors valued the subject property at \$388,000 and assessed a tax thereon, which appellant timely paid, at a rate of \$14.25 per thousand, in the amount of \$5,529.00. On January 25, 2007, in accordance with G.L. c. 59, § 59, appellant timely filed an Application for Abatement with the assessors, which was denied on March 23, 2007. Subsequently, on May 21, 2007, appellant seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide this appeal.

Located in neighborhood 102 in the City of Pittsfield, the subject property consists of a 0.62-acre parcel of real estate improved with a single-family, wood-frame, Colonial-style dwelling. The subject dwelling was built in 2001 and contains approximately 2,426 square feet of living space. There are eight rooms, including four bedrooms, and also

two full bathrooms and one half-bathroom. The house, which is heated by a gas-fired, forced-hot-air system, also contains a finished basement with a total finished area of 1,166 square feet, and a two-car attached garage.

In a prior proceeding concerning fiscal year 2006, the Board determined that the fair cash value of the subject property was \$359,800 as of January 1, 2005. Consequently, the assessors had the burden of going forward with evidence showing that the increase in value to \$389,000 for fiscal year 2007 was warranted. To meet their burden, the assessors offered the testimony of Kelly Baumert, assessor. Ms. Baumert testified that there were no sales in the Charisma Drive neighborhood in the past several years. Therefore, she relied on two sales of Colonial-style dwellings on nearby Meadow Ridge Drive that occurred in 2004.

Sale number one, located at 31 Meadow Ridge Drive, is a 0.76-acre lot improved with a 2,864 square-foot Colonial-style dwelling. This property sold on December 27, 2004 for \$400,000.00. Sale number two, located at 33 Meadow Ridge Drive, is a 0.76-acre lot improved with a 2,344 square-foot Colonial-style dwelling. This property sold on April 5, 2004 for \$389,000.00, and subsequently resold, on April 10, 2007, for \$425,000.

Ms. Baumert testified that although the comparable properties are not sited on the same street as the subject property, they are considered to be part of the same neighborhood 102 because of their similar age, style and location. In addition, the assessors assigned both properties a condition factor of "good," the same as the subject property. In her testimony, however, Ms. Baumert pointed out one significant difference between the chosen comparables and the subject property - the large disparity in finished-basement area. Both 31 and 33 Meadow Ridge Drive have a finished-basement area of 324 square feet, with a value added of \$3,240; the subject property has a finished-basement area of 1,166 square feet, with a value added of \$12,480. Despite these differences, the assessors concluded that the chosen sales were comparable to the subject property and, therefore, were indicative of the subject property's fair market value.

Ms. Baumert further testified that for fiscal year 2007, 31 and 33 Meadow Ridge Drive were assessed at \$370,600 and \$406,900, respectively. Therefore, even without considering the subject property's larger finished-basement area, and greater value added, the subject property's fiscal year 2007 assessment is below the

comparables' sale prices and within the range of the 2007 assessments.

Appellant attempted to prove that the subject property was overvalued for fiscal year 2007 by showing that the subject property's per-square-foot assessed building value was higher than the per-square-foot assessed building values of other properties located on Charisma Drive. To support this position, appellant offered into evidence the property record cards for all properties on Charisma Drive and also a self-prepared analysis illustrating the acreage, living area, construction date, and land and building assessments for fiscal years 2005, 2006 and 2007, for each of these properties.

Appellant maintained that the properties located at 1, 8 and 14 Charisma Drive were most comparable to the subject property. Number 1 Charisma Drive is a 1.5-acre lot improved with a 3,434 square foot dwelling; number 8 Charisma Drive is a 0.64-acre lot improved with a 2,856 square foot dwelling; and, number 14 Charisma Drive is a 0.56-acre lot improved with a 2,328 square foot dwelling. The properties were assessed at \$472,300, \$364,400, and \$321,900, respectively, with building value assessments of \$115.96, \$103.82, and \$109.41, per square foot. Therefore, appellant argued, the subject property, which had a

building value assessment of \$132.03 per square foot, was overvalued for fiscal year 2007.

Appellant did not, however, offer sufficient evidence to establish that these properties were comparable to the subject property. Further, appellant did not account for differences between his cited properties and the subject property. First, appellant failed to account for the fact that 1 Charisma Drive has nearly fifty percent more living area than the subject property. Second, and perhaps most notable, appellant failed to account for the subject property's 1,166 square feet of finished-basement area, compared to the cited comparables, which had no finished basements.

Based on the evidence presented, the Presiding Commissioner found that the appellee met its burden of producing evidence which showed that its increased assessment of the subject property over the value found by the Board for fiscal year 2006 was warranted. The Board found that the assessors offered sufficient evidence to establish comparability between the cited comparables' neighborhood and the subject property neighborhood. Further, the Board found that the assessors made appropriate adjustments to the sale prices to account for differences between the cited comparables and the subject

property, including the lack of a finished basement. By submitting evidence of comparable sales, and also assessments of comparable properties, the assessors sufficiently established that the increase in the subject property's assessed value over the Board's finding of value for fiscal year 2006 was warranted. In contrast, the Presiding Commissioner found and ruled that the appellant failed to offer sufficient credible evidence to establish that the subject property was overvalued for fiscal year 2007.

Accordingly, in accordance with G.L. c. 58A, § 1A and 831 CMR 1.30, the Presiding Commissioner issued a single-member decision for the appellee.

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 in a free and open market 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).

Generally, "the burden of proof is upon the petitioner to make out its right as a matter of law to abatement of the tax." ***Schlaiker v. Assessors of Great Barrington***,

365 Mass. 243, 245 (1974) (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 52 (1922)). "[T]he [B]oard is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 363 Mass. at 245.)

However, when the Board has issued a decision establishing the fair cash value of a property for either of the two fiscal years immediately preceding the year at issue, the burden is on the assessors to show that any increase in the value over the value found by the Board for the latest of the preceding two fiscal years is warranted. G.L. c. 58A, § 12A. Since the Board valued the subject property at \$359,800 in fiscal year 2006, See **Charisma Drive Nominee Trust v. Assessors of Pittsfield**, Mass. ATB Findings of Fact and Reports 2007-582, the burden is on the appellee to present evidence showing that its assessment of \$388,000 in fiscal year 2007 was warranted.

To establish the fair cash value of the subject property, the appellee may rely on a sales-comparison analysis of comparable properties. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). "[T]he market value of a property is related to the [sale] prices

of comparable, competitive properties." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 277, 417 (12th ed. 2001). In the present appeal, the appellee relied on sales of nearby properties that were similar to the subject property in size and condition. The Presiding Commissioner found that the assessors offered sufficient evidence to establish comparability between the cited properties' neighborhood and the subject property neighborhood and also made adjustments to account for differences, such as the lack of a finished basement. Therefore, the Board found that the assessors' comparables, as adjusted, warranted an increase in valuation of the subject property. Accordingly, the Board found and ruled that the appellee met its burden of producing evidence which showed that the increase in assessed value for fiscal year 2007 to \$388,000 was warranted.

Despite the shift in the burden of production, the burden of persuasion on the issue of fair cash value remains with appellant. See **Johnson v. Assessors of Lunenburg**, Mass. ATB Findings of Fact and Reports 1991-2, 8; **Cressy Dockham**, Mass. ATB Findings of Fact and Reports 1989 at 86-7. To meet this burden of persuasion, the 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.**, 393 Mass. at 600 (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 board." **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972). Other properties the assessed values of which are relied upon must be comparable to the subject property in order to be probative of the fair cash value. See **id.** "Moreover, reliable comparable sales data will ordinarily trump comparable assessment information for purposes of finding a property's fair cash value." **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 2007-403.

In the present appeal, appellant attempted to prove, by comparison to the assessed values of nearby properties, that the subject property was overvalued. Appellant did

not, however, provide sufficient evidence to establish comparability between the purported comparables and the subject property. Moreover, appellant did not account for the fact that the subject property has a large finished basement area and the nearby properties do not. "[R]eliance on unadjusted assessments of assertedly comparable properties . . . [i]s insufficient to justify a value lower than that" assessed. **Antonino v. Assessors of Shutesbury**, Mass. ATB Findings of Fact and Reports 2008-54, 2008-71.

Moreover, "a taxpayer does not conclusively establish a right to an abatement merely by showing that his building is overvalued. 'The tax on a parcel of land and the building thereon is one tax.'" **Hinds**, Mass. ATB Findings of Fact and Reports at 2006-778, quoting **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 317 (1941). The Presiding Commissioner found that appellant's evidence "challenging the value of the building component of the subject assessment" failed to demonstrate "that the overall assessment of the subject property exceeded its fair cash value as of the relevant assessment date." **Hinds**, Mass. ATB Findings of Fact and Reports at 2006-779.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellee met its burden of presenting evidence which showed that the increase in the subject property's assessment over the fair cash value found by the Board for the prior fiscal year was warranted. The Presiding Commissioner further found and ruled that appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued a single-member decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas J. Mulhern, Commissioner

A true copy,

Attest: _____
Clerk of the Board

