COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOHN D. & JEAN A. WALACHY	**v.**	**BOARD OF ASSESSORS OF THE CITY OF HOLYOKE**
Docket No. F297209		Promulgated: June 10, 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 taxes on real estate located in the City of Holyoke, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2008.

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

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.

John D. Walachy, pro se, for the appellants.

Anthony Dulude, assessor, and *Deborah Brunelle,* assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2007, John D. & Jean A. Walachy (the "appellants") were the assessed owners of a 1.01-acre parcel of real estate located at 11 Pheasant Drive in the City of Holyoke ("subject property"). The lot is improved with a single-family, ranch-style dwelling, which contains approximately 1,952 square feet of finished living area. The dwelling was constructed in 1987 and has a total of seven rooms, including three bedrooms and also two full bathrooms. The basement is partially finished. Other amenities include a two-car attached garage, an open porch, a deck, and one fireplace. The subject property is located within the neighborhood known as Pilsudski Park.

For fiscal year 2008, the Board of Assessors of Holyoke ("assessors") originally valued the subject property at $320,800 and assessed a tax at the rate of $13.75 per thousand in the total amount of $4,411.00. In accordance with G.L. c. 59, § 57C, the appellants paid the tax due without incurring interest. On January 31, 2008, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors. On April 8, 2008, the assessors granted a partial abatement and lowered the subject property's value by $11,300, thereby reducing its assessed value to $309,500. The

appellants seasonably filed an appeal with the Appellate Tax Board ("Board") on June 25, 2008. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The appellants argued that the subject property was overvalued for fiscal year 2008. In support of their argument, the appellants offered into evidence an appraisal report prepared by an independent appraiser. In his report, the appraiser relied on six sales of ranch-style properties that sold during the period March 2006 through November 2006 with sale prices that ranged from $244,000 to $315,000. The appraiser made adjustments for location, lot size, quality of construction, condition, gross living area, finished basement, garage, deck/porch, and number of fireplaces. The appraiser then calculated adjusted sale prices that ranged from $267,800 to $305,300. The appraiser's opinion of the value of the subject property was $276,000. The appellants' appraiser, however, did not testify at the hearing, and the appellants presented no other evidence to support their contention of overvaluation.

The assessors presented their case-in-chief through the testimony of Anthony Dulude, an assessor for Holyoke.

The assessors also offered into evidence the requisite jurisdictional documents, the subject property's property record card, and the property record cards and sales information for four other properties located in Holyoke. The cited properties ranged in size from 0.22 acres to 1.10 acres with finished living areas that ranged from 1,372 square feet to 2,134 square feet. The properties sold during calendar year 2006 with sale prices that ranged from $272,000 to $335,000, with an average sale price of $310,500.

The assessors also reviewed the appraisal prepared by the appellants' independent appraiser and made several challenges. The assessors maintained that comparable sales number three and number four are both located on state highways and are, therefore, not at all comparable to the subject property's location. Although the appellants' appraiser made an adjustment for this factor to sale number three, he failed to make such an adjustment to sale number four. The assessors also argued that comparable sale number five is located in an area that is inferior to the subject property, yet the appellants' appraiser made no adjustment. Because the appellants' appraiser was not present to testify, the assessors were unable to cross-examine him on these issues.

Based on the evidence presented, and to the extent it is a finding of fact, the Presiding Commissioner found that the appellants did not meet their burden of proving that the subject property was overvalued for fiscal year 2008. The appellants' independent appraiser was not present at the hearing to explain the adjustments made in his appraisal and was not available for cross-examination by the assessors or questioning by the Presiding Commissioner. Consequently, the Presiding Commissioner gave little weight to the appraisal report prepared by the appellants' independent appraiser. In contrast, the Presiding Commissioner found that the assessors presented sufficient evidence of comparable sales and assessments to support the subject property's fiscal year 2008 assessment, as abated.

Accordingly, the Presiding Commissioner issued a 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 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).

The appellants have the burden of proving that the property has a lower value than that assessed. "'The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] 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, 55 (1922)). "[T]he board 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***, 365 Mass. at 245). 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.,*** 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, to prove that their property was overvalued, the appellants primarily relied on an appraisal, which cited six comparable properties. In his report, the appellants' independent appraiser made adjustments for factors such as location, condition, lot size, and finished living area, among others. The

appraiser's opinion of the value of the subject property was $276,000, which was $33,500 less than the assessed value, as abated, of $309,500. However, the independent appraiser was not present at the hearing to give testimony concerning his analysis. Further, he was not available for cross-examination by the assessors or questioning by the Presiding Commissioner, particularly with respect to questions about the locations of his chosen comparables and the respective adjustments.

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization; sales comparison; and cost reproduction. ***Correia v. New Bedford Redevelopment Authority,*** 375 Mass. 360, 362 (1978). "The [B]oard is not required to adopt any particular method of valuation." ***Pepsi-Cola Bottling Co. v. Assessors of Boston,*** 397 Mass. 447, 449 (1986).

"[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. Board of 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 (and the cases cited therein). Under the circumstances present in this appeal, the Presiding Commissioner found that the appellants' independent appraiser failed to adequately substantiate the adjustments made in his analysis.

In the present appeal, the Presiding Commissioner found that the assessors' comparable sales and assessment evidence was probative of the subject property's fair cash value and thus supported the subject property's assessed value for the fiscal year at issue.

On this basis, the Presiding Commissioner found and ruled that the appellants did not meet their burden of

proving that the subject property was overvalued for fiscal year 2008. Accordingly, the Presiding Commissioner entered a decision for the appellee in this appeal.

APPELLATE TAX BOARD

By: _____
Thomas J. Mulhern, Commissioner

A true copy,

Attest: _____
Clerk of the Board