

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

23 SOUTH STREET REALTY TRUST, v. BOARD OF ASSESSORS OF
CHARLES E. MONCY, TRUSTEE THE TOWN OF PLYMOUTH

Docket No. F296783

Promulgated:
January 4, 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 appellee to abate a tax on real estate in the Town of Plymouth, owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38, for fiscal year 2008.

Commissioner Rose heard the appeal. Chairman Hammond and Commissioners Scharaffa, Egan and Mulhern joined him in the 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.

Charles E. Moncy, pro se, for the appellant.

Catherine Salmon, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the evidence and testimony offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2007, Charles E. Moncy, Trustee, 23 South Street Realty Trust ("appellant") was the assessed owner of a 0.60-acre parcel of real estate located at 23 South Street in the Town of Plymouth ("subject property"). For fiscal year 2008, the Board of Assessors of the Town of Plymouth ("assessors") valued the subject property at \$738,000 and assessed a tax thereon at the rate of \$10.33 per thousand in the amount of \$7,737.89.¹ The appellant timely paid the tax due without incurring interest. On January 31, 2008, in accordance with G.L. c. 59, § 59, the appellant filed an Application for Abatement with the assessors, which they denied on April 8, 2008. On June 18, 2008, in accordance with G.L. c. 58A, § 7 and c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board. On this basis, the Board found and ruled that it had jurisdiction over this appeal.

The subject property is improved with a three-story, eight-unit apartment building. Each unit has a total of

¹ This amount includes a \$114.35 assessment under the Community Preservation Act.

three rooms, including one bedroom, and also one bathroom. In support of his argument that the subject property was overvalued for fiscal year 2008, the appellant used an income-capitalization analysis based on the subject property's actual income and expenses for calendar year 2006, as reported to the assessors pursuant to G.L. c. 59, § 38D. The appellant testified that seven of the units are Section 8 apartments with rents ranging from \$895 per month to \$1020 per month, and that the eighth apartment is rented by the appellant, and occupied by his son, for \$780 per month. The total rental income for calendar year 2006 was \$87,564. Mr. Moncy deducted operating expenses totaling \$57,791, which included \$31,140 for "cleaning services" and also a \$1,163 management fee paid to his son. Mr. Moncy then applied a vacancy rate deduction calculated at 4% of gross income and also a reserve for replacement deduction calculated at 2% of gross income, to arrive at a net operating income of \$23,914.²

Finally, Mr. Moncy applied a capitalization rate of 8.5% to arrive at an estimated fair market value of \$281,342. The appellant further testified that he would be amenable to "split the difference" between the subject

² Applying Mr. Moncy's vacancy, expenses and reserve for replacements actually results in a net-operating income of \$29,518.

property's fiscal year 2008 assessed value and his calculated fair market value and "accept" a fair market value of \$468,171.

In support of their assessment, the assessors relied on the testimony of Catherine Salmon, the Plymouth Assessor. Ms. Salmon offered into evidence an income-capitalization analysis based on the subject property's reported income and expense figures for calendar year 2006 and also a listing of market averages. Based on this information, the assessors used a gross income of \$84,000, a vacancy factor of 5%, an expense deduction of 15%, and also a reserve for replacement allowance of 2%. Finally, the assessors applied a capitalization rate of 8.5% which resulted in an estimate of value for the subject property of \$779,224.

Ms. Salmon also offered into evidence a market analysis of six properties that sold during the period April 2005 through December 2007 with sale prices that ranged from \$121,800 per unit to \$198,750 per unit. Based on these sales, Ms. Salmon estimated a fair market value of \$800,000, or \$100,000 per unit. All of these properties however included fewer units than the subject property and most were two-bedroom and three-bedroom units compared to the subject property's one-bedroom units. The Board

therefore found that the assessors chosen properties were not comparable to the subject property and gave little weight to the assessors' market analysis.

The Board found that the income-capitalization approach was the proper method for valuing the subject property. Although the appellant relied solely on the subject property's actual reported income, the Board found that it was reflective of the market as demonstrated by the assessors' evidence. The Board also found that the appellant's vacancy factor, reserve for replacement and capitalization rate were reflective of the market. The Board further found, however, that the appellant's operating expenses, which totaled nearly 60% of rental income, were excessive. In particular, the Board found that the more than \$30,000 for "cleaning services" and the management fee paid to the appellant's son were questionable and unreliable. Therefore, the Board found that the appellant grossly understated the subject property's net-operating income and resulting fair market value.

On this basis, the Board found and ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for fiscal year 2008.

Accordingly, the Board 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. The assessors have a statutory obligation 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 taxpayer has the burden of proving that the property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The Board is entitled to presume that the valuation made by the assessors is valid unless the taxpayer proves to the contrary. ***Id.*** The taxpayer must demonstrate that the assessed valuation of its property was improper. ***Foxborough Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 691 (1982) (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. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984).

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. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to ascertain the fair cash value of property: income capitalization; sales comparison; and cost of reproduction. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). Regardless of which method is employed to determine fair cash value, the Board must determine the highest price which a hypothetical willing buyer would pay to a hypothetical willing seller in an assumed free and open market. **Irving Saunders Trust v. Board of Assessors of Boston**, 26 Mass. App. Ct. 838, 845 (1989). The validity of a final estimate of market value depends largely on how well it can be supported by

market data. THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 134 (12th Ed. 2001).

"The Board is not required to adopt any particular method of valuation." *Pepsi-Cola Bottling Co. v. Assessors of Boston*, 397 Mass. 447, 449 (1986), but the income-capitalization method is "frequently applied with respect to income-producing property." *Taunton Redev. Assocs. v. Assessors of Taunton*, 393 Mass. 293, 295 (1984). In applying this method, the income stream used must reflect the property's earning capacity or market rental value. *Pepsi-Cola Bottling Co. v. Assessors of Boston*, 397 Mass. 447, 451 (1986). Imputing rental income to the subject property based on fair market rentals from comparable properties is evidence of value if, once adjusted, they are indicative of the subject property's earning capacity. See *Correia v. New Bedford Redevelopment Authority*, 5 Mass. App. Ct. 289, 293-94 (1977), *rev'd on other grounds*, 375 Mass. 360 (1978); *Library Services, Inc. v. Malden Redevelopment Authority*, 9 Mass. App. Ct. 877, 878 (1980) (rescript); *AVCO Manufacturing Corporation v. Assessors of Wilmington*, ATB Findings of Fact and Reports 1990-142. It is the earning capacity of real estate, rather than its actual income, which is probative of fair market value. *Assessors of Quincy v. Boston Consolidated Gas Co.*,

309 Mass. 60, 64 (1941). In order to prove the fair cash value of property through its earning capacity, one must calculate a gross potential income based on market rents, reduce that amount by vacancy and rent losses, deduct the landlord's approximate market expenses, and then apply a capitalization rate. See, e.g., **Alstores Realty Corp. v. Assessors of Peabody**, 391 Mass. 60, 62-71 (1984); **General Electric**, 393 Mass. at 610.

In the present appeal the appellant relied on an income-capitalization analysis to prove that the subject property was overvalued for the fiscal year at issue. The Board found that although the appellant's gross rent, vacancy factor, reserve for replacement and capitalization rate appear to be indicative of the market, the appellant substantially overstated the subject property's operating expenses and therefore grossly understated the subject property's net-operating income and corresponding fair market value.

"The [b]oard [can] accept such portions of the evidence as appear to have the more convincing weight. The market value of the property [can] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment The [b]oard [can] select the various elements of value as shown

by the record and from them form . . . its own independent judgment." *Assessors of Quincy v. Boston Consolidated Gas Company*, 309 Mass. 60, 72 (1941). See also, *North American Philips Lighting Corp. v. Assessors of Lynn*, 392 Mass. 296, 300 (1984); *New Boston Garden Corp. v. Board of Assessors of Boston*, 383 Mass. 456, 473 (1981); *Jordan Marsh Co. v. Assessors of Malden*, 359 Mass. 106, 110 (1971).

Based on the foregoing facts, the Board found that the appellant failed to meet his burden of proving that the subject property was overvalued for fiscal year 2008. Accordingly, the Board entered a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board