

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOHN & ANN IACOBUCCI

v.

BOARD OF ASSESSORS OF
THE TOWN OF AMESBURY

Docket No. F303539

Promulgated:
July 15, 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, Board of Assessors of the Town of Amesbury ("assessors"), to abate taxes on certain real estate located in the Town of Amesbury, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2009.

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

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

John Iacobucci, pro se, for the appellants.

Mary Marino, Assessor, Catherine Zolano, Assistant Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2008, the relevant date of assessment for the fiscal year at issue, John & Ann Iacobucci ("appellants") were the assessed owners of a parcel of real estate located at 5 Hillside Avenue in the Town of Amesbury ("subject property"). The parcel contains approximately 30,696 square feet of land and is improved with a Federalist-style, single-family dwelling built circa 1900. The dwelling contains about 3,762 square feet of finished living area. There are a total of nine rooms, including four bedrooms, as well as two full bathrooms and one half bathroom. Additional features include lead windows, custom woodwork, nine-foot ceilings, a butler pantry, five fireplaces, four porches (both covered and uncovered) a two-car detached garage, a carport, and a partially finished attic. The exterior of the dwelling is clapboard, and it has a slate roof with a mix of gable and hip styles. According to the property record card entered into evidence, the subject property is in "good plus" condition.

The subject site is a corner lot, which is irregular in shape, slightly above average in size and has driveway

access on Estes Street. The subject property is located on Route 150 near Amesbury center in a neighborhood improved with older Victorian and Colonial-style dwellings of similar size.

For fiscal year 2009, the assessors valued the subject property at \$562,400 and assessed taxes thereon, at the rate of \$16.53 per thousand, in the amount of \$9,296.47. On December 30, 2008, Amesbury's Collector of Taxes sent out the town's actual real estate tax bills for fiscal year 2009. In accordance with G.L. c. 59, § 57C, the appellants paid the tax due without incurring interest. On February 2, 2009, in accordance with G.L. c. 59, § 59, the appellants timely filed their Application for Abatement with the assessors, which the assessors denied on April 9, 2009. The appellants seasonably filed an appeal with the Board, which the Board received on July 10, 2009 in an envelope that was postmarked July 8, 2009.¹ On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellants presented their case through the testimony of Mr. and Mrs. Iacobucci, owners of the subject

¹Where as here, the Board receives a petition after the three-month due date, the date of postmark is deemed to be the date of filing. See G.L. c. 58A, § 7 and G. L. c. 59, §§ 64 and 65. Accordingly, the filing date of the petition is deemed to be July 8, 2009, and the appellants' appeal is timely.

property, and Donald L. Frigoletto, whom the Board qualified as a real estate valuation expert. Mr. Frigoletto used a comparable-sales analysis to value the subject property. Specifically, he relied on four sales of what he considered to be comparable, single-family residential properties located in Amesbury.

Mr. Frigoletto's comparable-sale properties ranged in lot size from 0.16 acres to 4.8 acres and were improved with homes with finished living areas that ranged from 2,155 square feet to 3,707 square feet. All sales occurred during 2007 with sale prices that ranged from \$410,000 to \$575,000. Comparable sales number one, number two and number four are antique Colonial- and Victorian-style homes that offer appeal similar to that of the subject property and are located on the same street as the subject property. Comparable sale number three is a newer Colonial-style home, built in 2002, and is sited on a significantly larger lot, 4.8 acres, in a superior neighborhood. This home, however, had the most comparable finished living area.

Mr. Frigoletto made adjustments to his comparable sales. First, he applied a timing adjustment of 1.5% per month to all sales to account for the declining market values in the area. He also made adjustments for differences in lot size, living area, number of bathrooms,

the lack of a carport, the number of porches and also the number of fireplaces, central air-conditioning, and overall condition. After applying his adjustments, Mr. Frigoletto's comparable properties' adjusted-sale prices ranged from \$485,825 to \$505,750.

Arriving at his final estimate of value, Mr. Frigoletto testified that he placed the most weight on comparable sales number one, number two and number four. After adjustments, the adjusted-sale prices for these properties ranged from \$493,890 to \$505,750. Based on his comparable-sales analysis, Mr. Frigoletto concluded that the fair market value of the subject property was \$500,000. The assessors presented no affirmative evidence of value but instead rested on the presumed validity of their assessment.

On the basis of all the evidence, the Board found that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue. The Board found that Mr. Frigoletto's comparable-sales analysis was credible and that his adjustments were reasonable. The Board agreed with Mr. Frigoletto that comparable-sale number three was the least comparable given its age, lot size, superior location and overall condition, and it gave little weight to this sale. Relying on the adjusted sale

prices of comparable-sales number one, number two and number four, the Board found that the subject property's fair market value for the fiscal year at issue was \$500,000.

Based on all of the evidence, the Board found that the subject property was overvalued by \$62,400 for the fiscal year at issue and, accordingly, granted an abatement of \$1,031.47.

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). Generally, real estate valuation experts and the Massachusetts courts rely upon three approaches to determine fair cash value of property: income capitalization, sales comparison, and cost reproduction. ***Correia v. New Bedford Redevelopment***, 375 Mass. 360, 362 (1978). "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).

The appellant has 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)).

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). "Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value." ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981).

On the basis of all of the evidence, the Board found that the appellants' comparable-sales analysis supported the appellants' claim that the subject property was overvalued for fiscal year 2009. The Board principally relied on the adjusted sale prices of Mr. Frigoletto's comparable sales number one, number two and number four to find that the subject property's fair market value for fiscal year 2009 was \$500,000. Accordingly, the Board found that the assessors overvalued the subject property for fiscal year 2009 and issued a decision for the appellants granting an abatement in the amount of \$1,031.47.

APPELLATE TAX BOARD

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

A true copy,

Attest: _____
Clerk of the Board