

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**MATTEO GALLO, TRUSTEE
OF O.V.N.T.**

v.

**BOARD OF ASSESSORS OF
THE CITY OF WOBURN**

Docket No. F323401

Promulgated:
July 12, 2016

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 Woburn ("appellee" or "assessors") to abate a tax on certain real estate in Woburn, owned by and assessed to Matteo Gallo, Trustee of O.V.N.T. ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2014 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose and Chmielinski joined her 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.

Matteo Gallo, pro se, for the appellant.

Andrew Creen, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on the evidence presented in this appeal, including the documents and testimony offered by both parties, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2013, the relevant assessment date for the fiscal year at issue, the appellant was the assessed owner of a 37,025 square-foot parcel of real estate located at 216 Main Street in Woburn (the "subject property"). The subject property was improved with two residential apartment buildings, which together contained a total of 31 rental apartments.

The smaller of the two buildings ("Building One"), which was built circa 1900, contained six apartment units with a total of 3,673 square feet of finished living area. The larger of the two buildings ("Building Two"), which was built in 1970, contained 25 apartment units with a total of 22,959 square feet of finished living area. Building One and Building Two together contained one studio apartment; 23 one-bedroom apartments; and seven two-bedroom apartments. The subject property was also improved with a large paved parking area which provided ample parking for both buildings.

The subject property is located on Main Street, which is a busy thoroughfare and offers convenient access to

transportation, including a bus stop, stores, and other businesses.

For the fiscal year at issue, the assessors valued the subject property at \$2,258,100, and assessed a tax thereon, at the rate of \$10.44 per thousand, in the total amount of \$23,574.56. On January 27, 2014, the appellant timely filed an Application for Abatement with the assessors, which they denied on March 27, 2014. The appellant seasonably filed a Petition Under Informal Procedure¹ with the Board on May 23, 2014. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

I. The Appellant's Evidence

It was the appellant's contention in this appeal that the subject property was overvalued for the fiscal year at issue. In support of his case, he presented the subject property's property record card from 2012, which noted its "tired" condition, photographs of the subject property, and a document comparing the assessment of the subject property to the assessment of another apartment building located on Main Street in Woburn ("Exhibit 3"), along with his own testimony.

The appellant has owned the subject property since 1971. He stated that it is in dated condition and further that it is

¹ The assessors timely elected to transfer this appeal to the formal procedure on June 4, 2014.

situated up a very steep incline, which makes it less desirable than other properties. He further testified that Building One is not de-leaded, and he was forced to settle an expensive lawsuit in 2009 as a result.

Exhibit 3 offered by the appellant was a chart comparing the salient features of the subject property, such as number of units, number of bedrooms and baths, and year built, to another property located at 949 Main Street in Woburn. 949 Main Street featured a building with 20 one-bedroom apartments. It was built by the same builder who built Building Two and, like Building Two, it was built in 1970. For the fiscal year at issue, 949 Main Street was assessed for \$1,295,400, or \$64,770 per unit, while the subject property was assessed for \$2,258,100, or \$72,841.93 per unit.

The appellant did not offer an opinion of the subject property's value for the fiscal year at issue, but in his Application for Abatement his opinion of the subject property's fair cash value was \$1,000,000.

II. The Assessors' Evidence

The assessors presented their case through the submission of numerous documents, including the relevant jurisdictional documents; photographs; assessment information for 34 buildings in Woburn considered to be in the same class as the subject property ("Exhibit H"); and a document containing, among other

things, a valuation analysis of the subject property using the income-capitalization approach. The assessors also presented the testimony of assessor John Connolly.

Mr. Connolly explained that the income-capitalization approach submitted into evidence utilized data collected by the assessors pursuant to their requests for information from other properties across Woburn under G.L. c. 59 § 38D ("§ 38D"). Mr. Connolly stated that the assessors used rent figures of \$540 a month for the subject property's studio apartment; \$900 a month for the one-bedroom apartments; and \$1,000 a month for the two-bedroom apartments. He stated that these figures were at the lower end of the range of rents reflected in the § 38D responses to reflect the subject property's dated condition. Mr. Connolly testified that the assessors used vacancy and expense estimates of 4% and 41%, respectively, as reflected in the § 38D responses, resulting in a net operating income of \$191,942. Mr. Connolly testified that to this net operating income the assessors applied a capitalization rate of 8.5%, which was based on information contained in the *Korpacz Survey*, among other sources. Using these figures, the assessors arrived at an indicated fair cash value for the subject property of \$2,258,100, which was its assessed value.

Exhibit H offered by the assessors contained information regarding 34 apartment buildings in Woburn. This exhibit showed

how many units each building contained, the year built, and the number of studio, one-bedroom, two-bedroom, and three-bedroom apartments contained in each building, as well as the overall assessed value and per-unit assessed value for fiscal year 2014 for each building. The exhibit revealed that the 34 properties had a range of per-unit assessed values spanning from a low of \$64,770 to a high of \$170,169 per unit, and that the subject property was the fourth lowest in per-unit assessed value, at \$72,842 per unit. This exhibit further showed that 949 Main Street, which was the property offered for comparison by Mr. Gallo, had the lowest per-unit assessed value of all of the properties.

The assessors provided additional information regarding 949 Main Street, including that it was located at the edge of Woburn, and as such it was not proximate to stores and other amenities, like the subject property. The assessors also highlighted the fact that 949 Main Street contained exclusively one-bedroom apartments, while the subject property had seven two-bedroom apartments, which command a higher rent and thus make a property more valuable in general.

Finally, the assessors pointed out that they requested income and expense information pertaining to the subject property from Mr. Gallo, but he failed to provide it to them, just as he did not introduce that information at the hearing of this appeal.

III. The Board's Conclusions

On the basis of all of the evidence, the Board found that the appellant failed to meet his burden of demonstrating that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The Board found the evidence offered by the appellant to be wanting, as it consisted primarily of a property record card for the subject property for a fiscal year other than the fiscal year at issue; a few exterior photographs of the subject property; and a comparison to the assessed value of just a single other property in Woburn. The Board found that the appellant's evidence did not furnish a persuasive indication that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue.

In contrast, the Board found that the evidence offered by the assessors provided additional support for the assessment. The income-capitalization approach offered by the assessors was reasonable and supported by the market evidence. The appellant did not meaningfully challenge the income, vacancy, and expense figures used by the assessors, nor did he provide any of the actual financial information regarding the subject property.

Moreover, the evidence offered by the assessors with respect to the appellant's lone comparison property of 949 Main Street seriously undermined the probative worth of that property. Specifically, the assessors demonstrated that 949

Main Street had only one-bedroom units, unlike the subject property, and was inferior in location to the subject property. Furthermore, the assessors highlighted the fact that Mr. Gallo selected for comparison the property with the very lowest per-unit assessed value among similar types of properties within Woburn. As the appellant's evidence was minimal to begin with, and its reliability was seriously undercut by the assessors, the Board concluded that the appellant failed to meet his burden of establishing his entitlement to an abatement. Accordingly, the Board 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 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).

General Laws Chapter 58A, § 12B provides in pertinent part that 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 introduction of ample and substantial evidence in this regard may provide adequate support for abatement." **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing **Garvey v. Assessors of West Newbury**, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see **Turner v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-309, 317-18. The assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must also be adjusted to account for differences with the subject. See **Heitin v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2002-323, 334.

In the present appeal, the appellant presented evidence regarding the assessed value of a single property - 949 Main Street - to that of the subject property. While these two properties had certain similarities, i.e., they were built by the same builder in the same year,² they were not similar in other respects, such as location and the availability of two-bedroom apartments. As the appellant made no adjustments to account for these differences, the Board found and ruled that the assessed value of 949 Main Street did not provide persuasive evidence of overvaluation here. Moreover, the appellant offered evidence of only one other assessment, which is not usually a sufficient sample size for comparison. Comparison to "a single [property] does not necessarily reflect market value.'" **Michael Franco v. Assessors of Holyoke**, Mass. ATB Findings of Fact and Reports 2008-885, 891 (other citations omitted).

The remainder of the appellant's evidence consisted of a few photographs of the subject property, the subject property's property record card from a time period that was not relevant to the fiscal year at issue, and the appellant's brief testimony. None of this evidence, even taken *in toto*, provided a reliable basis on which to determine the subject property's fair cash value.

² Building Two and the building located at 949 Main Street were built by the same builder in the same year.

In contrast, the assessors introduced substantial, credible evidence into the record in defense of the assessment, including comparable assessment information from nearly three dozen similar properties in Woburn.

In addition, the assessors offered evidence of fair cash value determined through an income-capitalization analysis. 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). As the subject property was an income-producing property, this methodology was appropriate and provided a reliable indication in this case that the subject property's assessed value did not exceed its fair cash value for the fiscal year at issue.

In conclusion, based on the paucity of reliable or probative valuation evidence offered by the appellant, and after considering the ample and persuasive valuation evidence offered by the assessors, the Board found and ruled that the appellant did not meet his burden of proving a lower value for the subject property than that assessed. Accordingly, the Board issued 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