

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**J & M REALTY TRUST,  
MICHAEL A. CASOLI, TRUSTEE**

v.

**BOARD OF ASSESSORS OF  
THE TOWN OF SWAMPSCOTT**

Docket No. F305575

Promulgated:  
May 24, 2012

This is an appeal originally filed under the informal procedure pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Swampscott ("assessors" or "appellee") to abate taxes on certain real estate owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38 for fiscal year 2010.<sup>1</sup>

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

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

*Micahel A. Casoli*, Esq. for the appellant.

*Donna Champagne O'Keefe*, assessor, for the appellee.

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<sup>1</sup> The appellee, in accordance with G.L. c. 58A, § 7A, elected to transfer the appeal to the formal procedure.

## **FINDINGS OF FACT AND REPORT**

On January 1, 2009, J & M Realty Trust, Michael A. Casoli, Trustee ("the trust" or "appellant") was the assessed owner of a parcel of real estate, improved with a single-family dwelling, located at 190 Burrill Street in Swampscott. The subject parcel contains approximately 0.14 acres and is identified for assessing purposes on the property record card as map 3, block 92, lot 0. For fiscal year 2010, the assessors valued the subject property at \$259,000 and assessed a tax thereon, at the rate of \$16.48 per thousand, in the amount of \$4,268.32. On December 30, 2009, Swampscott's Collector of Taxes sent out the town's actual real estate tax notices for fiscal year 2010. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On January 20, 2010, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which was denied on March 11, 2010. On March 25, 2010, in accordance with G.L. c. 59, 64 and 65, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The subject property is a 6,040-square-foot parcel of real estate improved with a wood-framed, single-family dwelling constructed circa 1840. The subject dwelling contains 1,345

square feet of living space and has a total of six rooms, including three bedrooms, as well as one full bathroom. The appellant purchased the subject property together with 25 Railroad Avenue, which is a 5,800-square-foot parcel improved with a three-story, wood-framed, mixed-use building also built circa 1840. The appellant did not appeal the fiscal year 2010 assessment on 25 Railroad Avenue. The subject dwelling is rented for residential use and the rear yard is used as parking for the 25 Railroad Avenue property.

The appellant contended that because the subject property provides parking for the adjacent commercial building located at 25 Railroad Avenue, it cannot be sold separately and therefore the subject property's highest and best use was as a single economic unit together with 25 Railroad Avenue. Therefore, the appellant argued, the subject property cannot be valued using a comparable-sales analysis and should, instead, be valued using an income-capitalization analysis. The appellant's opinion of fair market value for the fiscal year at issue was \$141,000.

In support of the appellant's claim, Mr. Casoli prepared an income-capitalization analysis using the subject property's actual rental income and expenses, including taxes, water and sewer, and insurance. Mr. Casoli also allowed a maintenance expense calculated at 3% of the subject property's gross income. Finally, he divided the subject property's net-operating income,

revenue less expenses, by a capitalization rate of 8% to arrive at an indicated value for the subject property of \$140,739.63, which he rounded to \$141,000.

The appellant also offered into evidence the on-line property record cards for two neighboring properties located at 177 and 185 Burrill Street and three properties located on Crescent Street, which is approximately one-half mile from the subject property. The appellant's purportedly comparable properties were slightly smaller than the subject property, ranging in size from 0.076 acres to 0.099 acres, and were improved with Colonial-style dwellings built in the mid- to late-1800's, ranging in size from 1,085 square feet to 1,602 square feet. The assessed values for these properties ranged from \$211,900 to \$243,000. However, none of the appellant's purportedly comparable properties provided parking for an adjacent commercial building and Mr. Casoli did not offer any adjustments to his comparable properties to account for any differences between the comparable properties and the subject property.

For their part, the assessors offered the testimony of Donna Champagne O'Keefe, the town assessor, and the introduction of several exhibits, including the requisite jurisdictional documentation and the subject property's property record card.

After considering all the testimony and exhibits, the Presiding Commissioner found that the appellant did not meet his burden of proving that the subject property was overvalued for fiscal year 2010. In reaching his conclusion of fair cash value, the Presiding Commissioner found that the highest and best use of the subject property was its continued use as a single-family dwelling and accordingly, the comparable-sales and assessments analyses were the most appropriate valuation techniques to use to value the subject property. Assuming, for the sake of argument, that the income-capitalization method was an appropriate method of valuation, the Presiding Commissioner found that the appellant's analysis was flawed.

The income-capitalization analysis requires a determination of the property's annual rental income and expenses based on market values, a vacancy factor, and an appropriate capitalization rate. In the present appeal, Mr. Casoli argued that the subject property and the adjacent parcel located at 25 Railroad Avenue should be valued as a single unit. However, in his income-capitalization analysis, Mr. Casoli failed to include the income and expenses attributable to the adjacent property and, instead, relied solely on the subject property's income and expenses. Moreover, Mr. Casoli failed to verify the subject property's actual income and expenses with the market; he failed to offer any relevant data to support his purported maintenance

expense calculated at a percentage of gross income; and he failed to offer any explanation or substantiation for his chosen capitalization rate. Furthermore, Mr. Casoli failed to account for any potential revenue generated from the parking provided for 25 Railroad Avenue. Therefore, the Presiding Commissioner found that the totality of these mistakes and shortcomings adversely impacted the reliability and credibility of Mr. Casoli's estimate of the subject property's fair market value.

For the foregoing reasons, the Presiding Commissioner found that Mr. Casoli's income-capitalization analysis was not a reliable indicator of the subject property's fair cash value for the fiscal year at issue. The Presiding Commissioner also found that the evidence submitted by the assessors did not undermine the assessment. Accordingly, the Presiding Commissioner issued a single-member 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 taxpayer[] . . . prove[s] 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)).

The ascertainment of a property's highest and best use is a prerequisite to valuation analysis. See **Peterson v. Assessors of Boston**, 62 Mass. App. Ct. 428, 429 (2004); **Irving Saunders Trust v. Assessors of Boston**, 26 Mass. App. Ct. 838, 843 (1989). "A property's highest and best use must be legally permissible, physically possible, financially feasible, and maximally productive." **Northshore Mall Limited Partnership v. Assessors of Peabody**, Mass. ATB Findings of Fact and Reports 2004-195,

246, *aff'd*, 63 Mass. App. Ct. 1116 (2005). In the present appeal, the Presiding Commissioner found that the subject property's highest and best use was its continued use as a single-family dwelling.

Assuming the income-capitalization analysis should be used to value the subject property, the Presiding Commissioner found that Mr. Casoli's analysis was flawed. Under the income-capitalization approach, valuation is determined by dividing net-operating income by a capitalization rate. See **Assessors of Brookline v. Buehler**, 396 Mass. 520, 522-23 (1986). Net-operating income is obtained by subtracting market expenses from a market-derived gross income. *Id.* at 523. Income and expense figures and capitalization rates, therefore, are the essential building blocks of the income-capitalization method; the ultimate reliability of an estimate of fair cash value depends in large part on the individual reliability of these components. **Fairlane Homes Realty Trust, Peter Knox, Trustee v. Assessors of Shirley**, Mass. ATB Findings of Fact and Reports 2011-793, 812-813. Using actual income figures may be acceptable, as long as they reflect the market for the particular type of property involved. **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 449 (1986); see also **Carye v. Assessors of Chelmsford**, 394 Mass. 1001 (1985) (affirming the Board's use of actual rents for valuation because there was substantial



evidence in the record to support the Board's conclusion that actual rents were an adequate measure of the earning capacity of the real estate at issue in that appeal). Similarly, the expenses and allowances deducted should mirror the market. **General Electric Co.**, 393 Mass. at 610.

In the present appeal, the appellant argued that the subject property and the adjacent parcel located at 25 Railroad Avenue should be valued as a single unit. However, in his income-capitalization analysis, Mr. Casoli failed to include the income and expenses attributable to the adjacent property and, instead, relied solely on the subject property's income and expenses. Further, the Presiding Commissioner found that Mr. Casoli did not verify his actual income and expenses with the market and he failed to utilize market data in selecting the rate and amount of his deduction for maintenance. Moreover, Mr. Casoli failed to account for any potential revenue generated from the parking provided for 25 Railroad Avenue. Finally, the Presiding Commissioner found that Mr. Casoli failed to provide any foundation to support his chosen capitalization rate. See **Rezek v. Assessors of Seekonk**, Mass. ATB Findings of Fact and Reports 2012-493, 512. In sum, the Presiding Commissioner found that Mr. Casoli's numerous failures and inconsistencies adversely impacted the reliability and credibility of his

methodology such that his analysis could not be relied upon to estimate the subject property's fair market value.

Additionally, evidence of the sale prices and assessed values of comparable properties usually provide the most probative evidence of fair cash value of a single-family property. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 297 (13<sup>th</sup> ed., 2001); G.L. c. 58A, § 12B. Purportedly comparable properties used in a comparable-sales or assessments analysis must be adjusted for differences with the subject property. See *William Welsh Graham et al. v. Assessors of West Tisbury*, Mass. ATB Findings of Fact and Reports 2007-321, 402 ("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."), *aff'd*, 73 Mass. App. Ct. 1107 (2008); *Lupacchino v. Assessors of Southborough*, Mass. ATB Findings of Fact and Reports 2008-1253, 1269 ("[W]ithout appropriate adjustments . . . the values [assigned to the comparable] properties [do] not provide reliable indicator[s] of the subject's fair cash value."). In the present appeal, the Presiding Commissioner found that the appellant failed to perform a comparable-sales analysis or make adjustments for differences between Mr. Casoli's purportedly comparable assessments and the subject property.

On the basis of all of the evidence, the Presiding Commissioner found and ruled that the appellant failed to prove that the fair cash value of the subject property was less than its assessed value. The Presiding Commissioner therefore found and ruled that the appellant did not establish his right to an abatement, and, accordingly, issued a single-member decision for the appellee in this appeal.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas J. Mulhern, Commissioner

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board