

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LOCATIONS, INC.

v.

BOARD OF ASSESSORS OF  
THE CITY OF WORCESTER

Docket Nos.: F318281 & F321719

Promulgated:  
May 25, 2016

These are appeals under the formal procedure<sup>1</sup> 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 Worcester ("assessors" or "appellee") to abate taxes on certain real estate in the City of Worcester owned by and assessed to Locations, Inc. ("appellant" or "Locations, Inc.") under G.L. c. 59, §§ 11 and 38, for fiscal years 2012 and 2013 ("fiscal years at issue").

Commissioner Chmielinski heard these appeals. Chairman Hammond and Commissioners Scharaffa, Rose, and Good joined him in the decisions for the appellant.

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.

*Dean Marcus, pro se*, for the appellant.

*John O'Day, Esq.* for the appellee.

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<sup>1</sup> The appellant originally filed these appeals under the informal procedure but the assessors timely elected to transfer them to the formal docket. See G.L. c. 58A, § 7A.

## FINDINGS OF FACT AND REPORT

On January 1, 2011 and January 1, 2012, the relevant assessment dates for the fiscal years at issue, the appellant was the assessed owner of a 0.14-acre parcel of land improved with a 29,070-square-foot commercial building ("subject property") located at 379 Main Street in Worcester. For assessment and real estate tax purposes, the subject property is identified as "Map ID 02/026/00026."

For fiscal year 2012, the assessors valued the subject property at \$839,000 and assessed a tax thereon, at the commercial real estate rate of \$29.07 per thousand, in the total amount of \$24,389.73. On May 25, 2012, Worcester's Collector of Taxes ("Collector") sent out the town's actual real estate tax bills for fiscal year 2012. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due. On May 31, 2012, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors, which they denied on August 9, 2012. On September 12, 2012, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board").

For fiscal year 2013, the assessors valued the subject property at \$839,000 and assessed a tax thereon, at the commercial real estate rate of \$30.85 per thousand, in the total amount of \$25,883.15. On December 17, 2012, the Collector sent

out the town's actual real estate tax bills for fiscal year 2013. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest. On February 1, 2013, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors. On April 9, 2013, the assessors granted the appellant a partial abatement by lowering the value of the subject property by \$62,800 to \$776,200 and abating the real estate tax by \$1,937.38. Not satisfied with this abatement, on May 6, 2013, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board.

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

These appeals were heard together with the appellant's appeals for a property located at 371 Main Street in Worcester. Neither party requested Findings of Fact and Report for the appeals related to 371 Main Street. The appellant and the assessors agreed that the evidence presented was applicable to all of the appeals. See G.L. c. 58A, § 8 and 831 CMR 1.19(5) (both of which provide in pertinent part that "petitions for abatement of taxes assessed upon real estate situated in the same general locality of same town may be heard together, irrespective of the identity of the appellants.").

The subject property is located in downtown Worcester, approximately one-half mile from State Route 9 and less than one mile from Interstate 290. The subject property consists of a 0.14-acre parcel of real estate improved with a five-story, mixed-use, commercial building ("subject building"). The subject building, which was built circa 1880, has a masonry frame structure with a wood truss roof, which is covered with rolled composite, and a brick and stone exterior. The subject building's interior finishes include a mix of carpet and vinyl floors and painted drywall. There is an elevator at the front of the building, which provides access to the upper floors. The property record card listed the subject property's condition as "average."

In support of its case that the subject property was overvalued for the fiscal years at issue, the appellant relied primarily on the testimony of Dean Marcus, the owner and president of Locations, Inc. Mr. Marcus testified that, as of the relevant dates of assessment, the first floor was occupied by two tenants, State Opticians and Cantina Bar & Grill, the second floor was leased to two churches, and floors three through five were vacant. The appellant also offered into evidence a copy of the front page of Locations, Inc.'s U.S. Corporation Income Tax Return, Form 1120, for tax year 2011 ("Form 1120"), which reported gross rents of \$86,331 and total

deductions of \$62,161. The appellant did not, however, provide any supporting documentation, including copies of existing leases or an itemization of reported expenses.

The appellant sold the subject property, together with the property located at 371 Main Street, on December 31, 2012 for \$1,000,000, of which the appellant allocated \$600,000 toward the subject property and \$400,000 to 371 Main Street.

For their part and in support of the assessed values for the fiscal years at issue, the assessors essentially rested on the presumed validity of the assessments. They did offer into evidence, however, several exhibits, including the relevant jurisdictional documentation and the subject property's fiscal year 2013 property record card and income valuation card, which included an income-capitalization analysis. The assessors maintained that the real estate market in Worcester was stable during the fiscal years at issue and, therefore, their fiscal year 2013 income-valuation analysis was also applicable in determining the subject property's fair market value for fiscal year 2012.

After considering all of the evidence, the Board agreed with the assessors' assertion that the market for these types of properties in downtown Worcester was stable from fiscal year 2012 to fiscal year 2013, but found that the subject property was overvalued for the fiscal years at issue. In reaching its

decision, the Board found that the properly allocated sales price of the subject property and the assessors' market derived income capitalization analysis provided the most persuasive evidence of value in these appeals. The Board found that the appellant failed to provide credible evidence to dispute the assessors' income-capitalization analysis. The summary income and expense data from the appellant's Form 1120 did not provide adequate information to refute the market derived income or expense figures upon which the assessors relied in their income-capitalization analysis; for example, the appellant did not show how the actual income and expense data on its Form 1120 related to the market or whether its expenses excluded taxes, depreciation and mortgage payments.

The Board further found that the subject property's sale on December 31, 2012, provided probative credible evidence of the subject property's fair market value for the fiscal years at issue. However, the Board found that the appellant provided no reasonable basis for its allocation of the total sale price, and thus the Board rejected the appellant's 3:2 ratio as arbitrary. Except for their differences in square footage, the Board found that the appellant's two buildings, which were the subject of the sale, were otherwise comparable. Therefore, the Board found that the proper method of allocation of the total sale price was based on a pro-rata comparison of the buildings' square footage,

which resulted in a sale price of \$675,000 for the subject property.

Recognizing the validity of both the sales-comparison and the income-capitalization approaches, the Board found that the subject property's fair market value was best estimated based on a blended rate of the values derived from the assessors' income-capitalization analysis and the appropriately allocated sale price. On this basis, the Board found and ruled that the subject property's fair cash value for the fiscal years at issue was \$757,000. Accordingly, the Board issued decisions for the appellant and granted abatements in the amount of \$2,383.74 for fiscal year 2012 and \$592.32 for fiscal year 2013.

#### 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 sustain the burden of proving 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)).

It is well settled that actual sales of the subject property are "'very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller' for [the property under appeal]." **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981) (quoting **First Nat'l Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 560 (1971)). In the present appeals, the appellant sold the subject property, together with the adjoining property located at 371 Main Street, on December 31, 2012 for \$1,000,000. Although the Board found little merit in the appellant's



allocation of the sale price between the two buildings, which calculated to a 3:2 ratio, the Board did find that the total sale price provided probative credible evidence of the subject property's fair cash value. Moreover, the Board further found that the income-capitalization approach is "frequently used with respect to income-producing property." ***Pepsi Cola Bottling Co. v. Assessors of Boston***, 397 Mass. 447, 449 (1986).

Based on the evidence presented, the Board found that the proper method for determining the subject property's fair market values for the fiscal years at issue was by blending the re-allocated portion of the subject property's recent sale with the value derived from the assessors' income-capitalization analysis. The Board, therefore, found that the subject property's fair market value for the fiscal years at issue was \$757,000.

Based on all of the evidence presented, the Board found and ruled that the subject property was overvalued for the fiscal years at issue. Accordingly, the Board issued decisions for the appellant and granted abatements in the amount of \$2,383.74 for fiscal year 2012 and \$592.32 for fiscal year 2013.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

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