COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ELIZABETH LANDRY	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF MATTAPOISETT**
Docket No. F303793		Promulgated: March 5, 2012

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 Town of Mattapoisett ("assessors" or "appellee"), to abate taxes on real estate owned by and assessed to Elizabeth Landry ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2009 ("fiscal year at issue").

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Scharaffa, Mulhern and Chmielinski joined him in the decision for the appellee.

These findings of fact and report are made on the motion of the Appellate Tax Board ("Board") pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32, and are issued simultaneously with the Board's Decision in this appeal.

Patricia A. McArdle, Esq. for the appellant.

Donald Fleming, Esq., assessor, for the appellee.

FINDINGS OF FACT AND REPORT

I. INTRODUCTION

For the fiscal year at issue, the assessors dramatically increased values of waterfront and water-view land in the Town of Mattapoisett relative to values for the prior fiscal year. In certain cases, land values more than doubled over fiscal year 2008 values, resulting in substantially increased property tax burdens on the owners of such land.

Following the issuance of assessments reflecting the increases, numerous appeals were filed with the assessors and, subsequently, the Board. Many of the appeals were filed by one attorney who, in turn, retained a single appraisal firm to prepare an appraisal report for each property and testify at the hearing of each appeal.

Given the volume of the appeals, similarities among the properties, common representation of the appellants, and valuation by a single appraiser employing substantially the same valuation analysis, the Board, with the consent of the parties, consolidated the appeals brought by the referenced attorney, which were divided for hearing by location. Commissioner Mulhern heard appeals relating to properties on Pease Point and Commissioner Rose heard appeals of properties in the Crescent Beach area.

II. JURISDICTION AND FACTS

Based on the testimony and exhibits entered into evidence at the hearing of this appeal, the Board made the following findings of fact.

On January 1, 2008, the appellant was the assessed owner of an improved parcel of real estate located at 2 Union Avenue in the Crescent Beach section of Mattapoisett ("subject property"). The subject property consists of a 5,000 square-foot parcel improved with a single-family home that has 1,288 square feet of finished living area comprised of five rooms, including three bedrooms, as well as one full bathroom.

The subject property, which is located in a private neighborhood, is a waterfront property that offers direct ocean views.

For the fiscal year at issue, the assessors valued the subject property at $904,900 and assessed a tax thereon at the rate of $9.48 per thousand, in the total amount of $8,654.75.[1] The assessors valued the land component of the subject assessment at $812,400 and the dwelling at $92,500.

The appellant timely paid the taxes due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an abatement application with the

[1] This sum includes a Community Preservation Act surcharge of $76.30.

assessors. The appellant's abatement application was denied on or about April 23, 2009, and the appellant seasonably filed a Petition Under Formal Procedure with the Board on July 16, 2009. On the basis of the foregoing, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant argued that the subject property was significantly overvalued for the fiscal year at issue, disputing only the value placed on the land component of the contested assessment. In support of her argument, the appellant offered the testimony of Ms. Lori Carroll-Melker, a certified residential real estate appraiser whom the Board qualified as an expert in residential real estate appraisal.

Ms. Carroll-Melker testified that she had several years of real estate appraisal experience in Southeastern Massachusetts, including Cape Cod, the Islands, and in particular, Mattapoisett. Ms. Carroll-Melker testified that she had been engaged by the appellant's attorney to appraise only the land portion of the subject property and did not consider or incorporate the value of the property's improvements in her opinion of value. She also acknowledged that her name did not appear on the original appraisal report, which had been submitted to the assessors prior to

the hearing of this appeal. She maintained, however, that the absence of her signature was an oversight, and that she had participated in all facets of the report's preparation with her mother, Ms. Carol A. Carroll, who had signed the original appraisal report and served as principal of the Carroll Appraisal Company. The appellant offered into evidence a revised version of the original report signed by Ms. Carroll-Melker as well as Ms. Carroll. On the basis of Ms. Carroll-Melker's testimony regarding her participation in the preparation of the appraisal report, which the Board found credible, the Board allowed the report to be entered into evidence.

Ms. Carroll-Melker described the steps taken to appraise the subject property. Having concluded that a comparable-sales analysis was the appropriate methodology to appraise the subject property, Ms. Carroll-Melker and Ms. Carroll (together, "the appraisers") drove by the subject property, reviewed public documents, and searched multiple listing service ("MLS") data for land parcels they deemed comparable to the property. The appraisers also reviewed maps, including those providing aerial views such as the images available on the Google Earth website. Having identified comparable land data, the appraisers drove by

the selected properties.[2] On the basis of this review, they identified four sales on which they based their valuation of the subject property. The appraisers described the properties as follows:

> 1. 20 Oliver Street, Mattapoisett, is a 0.46-acre property with "deeded beach rights. . . close to the waterfront" that was sold on January 24, 2007 for $274,000.
>
> 2. 17 Nokomis Road, Marion, Massachusetts, is a waterfront property, one-quarter acre in size, that was sold on August 17, 2007 for $690,000.
>
> 3. 3 Pigwacket Lane, Mattapoisett, is a 1.5-acre property with a "slightly inferior location and lot, however, similar waterviews," that was sold on January 30, 2008 for $300,000. [3]
>
> 4. 2 David Street, Mattapoisett, is a property with "water views and water access," 0.28-acre in size, that was sold on June 9, 2008 for $590,000.

The appraisers made adjustments to these sales to derive an indicated value of $550,000 for the land component of the subject property for the fiscal year at

[2] The Board noted the appraisers' failure to inspect either the subject property or their sale properties on foot, which would have afforded a significantly better means to observe a parcel's physical attributes and make relevant comparisons.

[3] Ms. Carroll-Melker and the appraisal report to which she referred stated that the parcel size of this property is 1.5 acres. However, a property record card submitted by the assessors, which the Board found more probative than the appraisers' unsubstantiated statements, indicated that the parcel is 0.75 acres. All else being equal, this smaller parcel size weighs in favor of a higher indicated value for the subject parcel than that derived by the appraisers.

issue. The Board, however, found the appraisers' valuation methodology wanting in several respects and, ultimately, lacking the credible data necessary to establish the fair cash value of the subject property for the fiscal year at issue.

As acknowledged by Ms. Carroll-Melker, the appraisers made adjustments to the properties chosen for comparison to the subject property's parcel to derive the indicated value of the subject parcel for the fiscal year at issue. The appraisers, however, described the purportedly comparable properties only in general terms, and failed to specify the nature or magnitude of the adjustments made to the sales prices of the properties including, but not limited to, adjustments made for location, sale date, parcel size, topography, views and encumbrances. Thus, the Board had no means to discern whether the appraisers' adjustments were appropriate or, in turn, the indicated value of the subject parcel was justified.

The Board also found that the appraisers did not provide a sufficiently substantive response to the assessors' assertion that the sales of all of their chosen properties had been "coded out" because Mattapoisett and Marion had concluded that the sales were not arms-length

transactions.[4] Having acknowledged that she was aware that the properties had been "coded out," Ms. Carroll-Melker stated that she had reviewed sources such as MLS and Banker and Tradesman to confirm that each sale had qualified as an arm's-length transaction. She conceded, however, that neither she nor Ms. Carroll had communicated with the parties or brokers involved in any of the sales to confirm that the sales had been at arm's-length. When, as here, doubt has been cast on whether transactions were at arm's-length, the appraisers' limited investigation and failure to consult sources able to confirm the circumstances surrounding the transactions led the Board to conclude that the sales could not be relied upon to provide credible probative evidence of the subject property's fair cash value.

Finally, the Board was influenced by glaring inconsistencies in the appraisers' presentations. For example, as indicated above, the appraisers cited 3 Pigwacket Lane as a comparable sale in the present appeal. In their appraisal report, the appraisers stated that, compared with the subject property, a waterfront property

[4] The assessors' assertion was supported by submission of property record cards for each of the properties in question containing notations indicating that the properties had been "coded out," as well as uncontroverted testimony presented by the assessors confirming the accuracy of the notations.

which has direct waterfront views, 3 Pigwacket Lane had a "slightly inferior location and lot, however, similar waterviews." During the course of the hearing held by Commissioner Mulhern relating to three non-waterfront properties in Pease Point,[5] (the "Pease Point hearing") the appraisers also cited 3 Pigwacket Lane in their comparable-sales analysis. In sharp contrast, however, the appraisers then referred to the property as having either "limited or no waterviews," or as having no waterviews. These descriptions cannot reasonably be reconciled with the description provided in the present appeal. Rather, each description appears tailored to support the appraisers' assertion of comparability in the appeal to which it relates, evidencing an abject failure to consistently and accurately portray the properties incorporated in their comparable-sales analyses.

The appraisers' description of the property at 2 David Street in the Pease Point hearing was also materially different from its description in the present appeal. More specifically, the appraisal reports for the Pease Point hearing explicitly referenced deed restrictions on the property, presumably negatively affecting the property's

[5] The Pease Point properties are located at 6 Avenue A, 12 Avenue A, and 20 Avenue A and form part of the group of properties consolidated for hearing as discussed in the Introduction section of these findings of fact and report.

value. No such reference was made in the present appeal, in which the appraisers simply described the property as having "waterviews and water access."

The Board found that the cited disparities in the descriptions of the appraisers' chosen comparable properties, and particularly those relating to 3 Pigwacket Lane, not only diminished the properties' probative value as indicators of the subject parcel's value, but substantially undermined the appraisers' credibility.

In sum, the Board found that various and significant flaws in the appraisers' valuation methodology compelled the conclusion that the appraisers provided scant credible evidence of the subject property's land value and therefore could not be relied upon to estimate that value or, in turn, the subject property's value for the fiscal year at issue.

For their part, the assessors offered the testimony of Mattapoisett assessor Robert Cole. Mr. Cole explained generally the method by which the assessors arrived at land valuations in Mattapoisett, including development of several factors which reflect a parcel's various attributes and are incorporated in the valuation methodology. During examination by appellant's counsel, Mr. Cole acknowledged what appeared to be disparities in application of these

factors to more than one parcel. The disparities did not, however, undermine the validity of the overall valuation methodology or provide a basis to determine that the subject property had been overvalued.

Having considered all of the evidence, the Board found and ruled that the appellant failed to provide sufficient probative credible evidence of the subject property's land value for the fiscal year at issue. She therefore failed to demonstrate that the property's assessed value exceeded its fair cash value. Further, although the Board could not endorse the assessors' valuation methodology under the circumstances present in this appeal, neither the methodology nor the underlying data supported a finding of overvaluation. 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 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. "'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[] sustained 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 the 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." ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983).

In the present appeal, the appellant sought to demonstrate that the subject property's parcel was overvalued and, therefore, that the property's overall assessed value was excessive. The Board, however, found that the appellant failed to present sufficient probative

credible evidence to demonstrate that the subject property was overvalued.

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

"[A]ctual sales of property generally furnish strong evidence of market value, provided they are arm's-length transactions." ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 682 (1982). "Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue." ***Giard v. Assessors of Colrain***, Mass. ATB Findings of Fact and Reports 2009-115, 123 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929)). Properties are "comparable" to the subject property when they share "fundamental similarities" with the subject property, including similar age, location, size and date of sale. ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). When offering sales, the taxpayer "bears the burden of 'establishing the comparability of . . . properties [used

for comparison] to the subject property.'" ***Wood v. Assessors of Fall River***, Mass. ATB Findings of Fact and Reports 2008-213, 225.

When comparable sales are used, allowances must be made for various factors which would otherwise cause disparities in the comparable property's sale prices. *See* ***Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke***, Mass. ATB Findings of Fact and Reports 1998-1072, 1082. "Adjustments for differences in the elements of comparison are made to the price of each comparable property . . . . The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 322 (13th ed., 2008).

While the Board would have sanctioned a properly executed comparable-sales analysis to value the subject property, the Board found that the appraisers' methodology was fatally flawed.

Although the appraisers made adjustments to their sale properties to estimate the value of the subject property's parcel, they described the properties only in general terms, and did not specify the nature or magnitude of their adjustments. The Board, therefore, could not determine if

the appraisers' adjustments were warranted or, in turn, if their indicated vale for the subject parcel was justified.

Moreover, the evidence presented cast substantial doubt on whether the appraisers' chosen sales qualified as arm's-length transactions. This doubt was not effectively addressed by the appraisers, undermining an assertion that the sales were properly included in the appraisers' comparable-sales analysis. *See* ***DSM Realty, Inc. v. Assessors of Andover,*** 391 Mass. 1014 (1984).

Finally, the appraisers gave glaringly inconsistent descriptions of the property at 3 Pigwacket Lane, which they offered as a comparable sale in both the present appeal and the Pease Point hearing. The Board found that these irreconcilable descriptions, coupled with the materially different descriptions of the property at 2 David Street, not only diminished the properties' probative value as indicators of the subject parcel's value, but substantially undermined the appraisers' credibility.

In sum, the Board found that the various and significant flaws in the appraisers' valuation methodology inexorably led to its conclusion that the appraisers provided scant credible evidence of the subject parcel's fair cash value. This evidence could not be relied upon to estimate the parcel's value for the fiscal year at issue.

A taxpayer does not establish the right to an abatement merely by showing that either the land or a building is overvalued; he must demonstrate that the overall assessment overstated the fair cash value of the subject property. *See* ***Anderson v. Assessors of Barnstable,*** Mass. ATB Findings of Fact and Reports 1999-596, 601. "In abatement proceedings, 'the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether the single assessment is excessive.'" ***Id.*** at 1999-601-02 (quoting ***Massachusetts General Hospital v. Belmont,*** 238 Mass. 396, 403 (1921)). Having concluded that the appellant failed to demonstrate that the subject property's land was overvalued, and given that the appellant disputed only that portion of the assessment, the Board found and ruled that the appellant failed to sustain her burden of demonstrating that the subject property's overall assessed value exceeded its fair cash value for the fiscal year at issue.

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