

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

NANCY ANGELINI

**v. BOARD OF ASSESSORS OF THE
TOWN OF BOXFORD**

Docket No. F340377

Promulgated:
October 28, 2021

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 Boxford ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Boxford owned by and assessed to Nancy Angelini ("appellant") for fiscal year 2020 ("fiscal year at issue").

Commissioner Good heard this appeal and was joined in the decision for the appellee by Chairman Hammond and Commissioners Elliott, Metzger, and DeFrancisco.

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

Nancy Angelini, pro se, for the appellant.

Kristin Hanlon, 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.

I. Introduction and jurisdiction

On January 1, 2019, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of property located at 4 Pond Street in Boxford ("subject property").

The subject property consists of a 2,500-square-foot home built in 1975, with four bedrooms and two-and-a-half bathrooms, situated on a 2.9-acre waterfront parcel on Lowe's Pond. A portion of the parcel is under water.

The assessors valued the subject property at \$565,000 and assessed a tax thereon at the rate of \$16.17 per \$1,000 in the amount of \$9,136.05. With the Community Preservation Act surcharge of 3 percent, the total assessment was \$9,361.62. The appellant paid the tax due without incurring any interest. The appellant filed an application for abatement on February 3, 2020, which was denied by the assessors on March 16, 2020. The appellant filed a petition with the Board on June 9, 2020.¹

¹ The appellant's petition was stamped as received by the Board on June 23, 2020, but the petition was mailed in an envelope postmarked June 9, 2020. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

II. The appellant's case

In addition to her own testimony, the appellant submitted numerous documents into evidence, including property record cards, maps, photographs, and a written explanation of her position. Her primary contention concerned the subject property's land value, specifically that various conservation restrictions prevented her from beautifying or making changes to the property and that, consequently, these restrictions justified a lower assessed value in the vicinity of a 5 percent reduction. The appellant purchased the subject property for \$557,500 in December 2017, and she claimed that she had not fully grasped the impact of the conservation restrictions at the time of purchase. Her alleged property limitations included a prohibition on tree removal; gardening restrictions due to proximity to the pond; and restrictions on home alterations, including the deck, because of the location within the buffer zone of the pond. The appellant also alleged that 0.4 acres of her land is under water in the pond, and therefore not useable at all. According to the appellant, she was unable to get permission for a floating dock.

The appellant's analysis relied upon three other properties on Pond Street with land under water - 12 Pond Street (fiscal year 2020 land value of \$312,700), 18 Pond Street (fiscal year 2020 land value of \$315,300), and 20 Pond Street (fiscal year 2020 land value of \$311,600). She contended that the land values of the

subject property (land value of \$319,600 for the fiscal year at issue) and these three properties did not take into consideration the portions of the properties that were under water and that "[w]e all have different amounts of upland and excess land, however our values are about the same."

The appellant also relied upon 36 Sunrise Road, a property located entirely upland with a fiscal year 2020 land value of \$320,100, reasoning that her upland of 1.6 acres is valued approximately the same value as the 1.93 acres of upland for 36 Sunrise Road.

III. The appellee's case

In addition to the testimony of Assessor Kristin Hanlon, the appellee submitted into evidence jurisdictional documents, a grid showing four alleged comparable sales and assessments of properties on Lowe's Pond, and a map showing that the comparable sales all had part of their land parcel under water. One of the comparable sales was the sale of the subject property to the appellant for \$557,500 in December 2017. Another comparable sale was 20 Pond Street - a 2,600-square-foot, two-acre property located directly on the pond - which sold in 2017 for \$545,000. This property was built in 1967 and featured four bedrooms and two and a half bathrooms.

The two other comparable sales - 122 Depot Road and 18 Pond Street - were 2013 sales offered by the assessors primarily to

show that all the sale-to-assessment ratios of the four comparable properties were between 0.96 to 0.98 percent.

IV. The Board's findings

Based upon the record in its entirety, the Board found that the appellant failed to meet her burden of proof in establishing that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue.

The Board found that the sale of the subject property itself to the appellant in December 2017 for \$557,500 detracted from the appellant's request for a 5 percent reduction in the assessed value for the fiscal year at issue. The appellant in essence sought an assessed value lower than the price she paid in an open-market, arm's-length transaction taking place within a year and a half of the relevant valuation date.

Further, the appellant's inclusion of land values for three other properties on Pond Street provided the Board with no insight as to why any of the land values for these properties were overvalued. Critically, the appellant's sole focus on the land values of the subject property and these allegedly comparable properties failed to establish why the assessment as a whole exceeded fair cash value for the fiscal year at issue. The relevant question is not whether either a land or building value is excessive, but rather whether the overall assessment is excessive. Looking at the total assessments of the allegedly comparable

properties reveals a starkly divergent assessment range. For instance, while the land value of 18 Pond Street was \$315,300 for fiscal year 2020, the total assessment for that property was \$1,265,800 versus the total assessment for the subject property of \$565,000.

Based upon the above and the record in its entirety, 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 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).

A taxpayer has the burden of proving that the property at issue 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 that taxpayer[] sustain[s] 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." **General Electric Co.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In this appeal, the Board found and ruled that the appellant provided no credible evidence to establish that the assessed value of the subject property was less than the appellant paid in an open-market, arm's-length transaction taking place within a year and a half of the relevant valuation date. See **Opanasets v. Assessors of Plymouth**, Mass. ATB Findings of Fact and Reports 2010-532, 540 ("In this appeal, the Board found and ruled that the sale of the subject property within eighteen months of the assessment date was reasonably proximate to the assessment date, and that the sale price of \$735,000 supported the assessment of \$618,600."); **Bubier, Trustee v. Assessors of Lynn**, Mass. ATB Findings of Fact and Reports 2001-12, 24 (For a case involving fiscal year 1999, "the Board found and ruled that the June 28, 1999, sale of the subject property to the appellant was an arm's-length transaction between two willing and knowledgeable parties, neither of whom was under any compulsion or duress. The Board further found and ruled

that the sale was appropriately proximate in time to the relevant assessment date.").

The Board also found and ruled that the appellant failed to present any reliable or credible proof of overvaluation, focusing on land value rather than the overall assessment. Similarly, in the case of **Ligor v. Assessors of Wellesley**, Mass. ATB Findings of Fact and Reports 2004-626, 632, 637, the taxpayer argued in part "that the assessors had overvalued the land component of the subject property because approximately twenty-three percent of the parcel's 11,522 square feet of land was under water," but "failed to prove that either the land component of the subject assessment or the overall assessment itself was overvalued." See also **Lang v. Assessors of Marblehead**, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding that "'[t]he tax on a parcel of land and the building thereon is one tax' and the ultimate conclusion is whether 'that single assessment is excessive'" and that a "'taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but rather that the assessment including both components is excessive") (citations omitted). In the present appeal, the total assessment values for the appellant's allegedly comparable properties had no useful correlation to the total assessment value of the subject property.

Based upon the above and the record in its entirety, the Board found and ruled that the appellant failed to establish that the fair cash value of the subject property was less than the assessed value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board