**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

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| **GARY A. & ANNE M. BOUDREAU** | **v.** | **BOARD OF ASSESSORS OF** |
|  |  | **THE TOWN OF EASTHAM** |

Docket No. F332030 Promulgated:

 February 13, 2019

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 Eastham (“appellee” or “assessors”) to abate a tax on real estate located in Eastham, owned by and assessed to Gary A. & Anne M. Boudreau (“appellants”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2017 (“fiscal year at issue”).

Commissioner Chmielinski (“Presiding Commissioner”) heard this appeal and issued a single-member decision for the appellants[[1]](#footnote-1) in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

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

*Gary A.* and *Anne M. Boudreau,* *pro se,* for the appellants.

*Belinda Eyestone*, principal 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 Presiding Commissioner made the following findings of fact.

On January 1, 2016, the appellants were the assessed owners of a 34,848-square-foot waterfront parcel of real estate located at 700 State Highway in Eastham (“subject property”). Situated on the subject property is a 480-square-foot seasonal cabin that does not have a bathroom and therefore, pursuant to both the building and health departments of Eastham, is not a legal dwelling. The subject property is located in the Town Cove area, a tidal body just off state Route 6 that allows fishing and boating, and is considered a prime location. As of the relevant date of assessment, the town had issued shellfish grants on areas of tidal flats in front of and abutting the appellants’ upland in Town Cove, which allow the grant holders to plant, grow, and harvest shellfish in the designated area.

For the fiscal year at issue, the assessors valued the subject property at $395,600 - $378,100 for the land and $17,500 for the detached building - and assessed a tax thereon, at the rate of $7.90 per thousand, in the total amount of $3,219,[[2]](#footnote-2) which the appellants paid without incurring interest. On September 26, 2016, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which they denied on October 3, 2016. On December 9, 2017, in accordance with G.L. c. 59, §§ 64 and 65, the appellants 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.

Prior to this appeal, the appellants successfully appealed the subject property’s fiscal year 2015 assessment. In that appeal, the Board issued a single-member decision reducing the subject property’s assessed value from $344,700 to a fair cash value of $320,000 as of January 1, 2014.  Pursuant to G.L. c. 58A, § 12A, because the increased assessment in this appeal involves one of the “next two fiscal years after a fiscal year for which the Board has determined the fair cash value” of the subject property, the burden is on the assessors to justify the increase over the Board’s fiscal year 2015 value determination.

In support of the increased assessment, Belinda Eyestone, principal assessor for Eastham, presented the property record cards for three properties located in the Town Cove area, including 670 State Highway, 550 State Highway, and 30 Rogers Lane. These properties ranged in size from 0.60 acres to 1.65 acres and were improved with residential dwellings that ranged in size from 1,951 square feet to 4,314 square feet. The properties sold between May 29, 2015 and June 21, 2017, with sale prices ranging from $750,000 to $1,942,192. Their assessments ranged from $738,000 to $1,820,700, and their land assessments ranged from $384,500 to $518,400. Ms. Eyestone testified that all of these properties are also subject to shellfish grants within their immediate tidal areas. She did not, however, provide any more information in this regard or make adjustments for any differences that existed between the subject property and the purportedly comparable properties.

The appellants presented their case through the testimony of Gary Boudreau, an owner of the subject property, and a self-prepared packet containing numerous documents, including: photographs of the subject property; marked-up photographs of the tidal area that is encumbered by the shellfish grants showing the increased number of shellfish cages, unmarked cages and underground pipes, and abandoned cages; copies of statutes requiring shellfish grants to be clearly identified; and correspondence between Mr. Boudreau and the town pertaining to the unmarked grants and the hazards they present. Mr. Boudreau testified that the appellants are challenging the subject property’s land assessment because their use and enjoyment of the subject property is adversely affected by the existing shellfish grants. Specifically, the appellants maintained that the grant holders’ failure to flag cages and underground pipes, metal poles, and cinder blocks poses a risk to swimmers in the immediate area and also makes it difficult for boaters to navigate through the waters. Mr. Boudreau further testified that the subject property is negatively impacted by the empty cages that are abandoned on the subject property and also by the wildlife that congregates on the cages and the accompanying infestation of the surrounding waters.

Based on the evidence presented, the Presiding Commissioner found that the assessors met their initial burden of overcoming the Board’s finding of value for fiscal year 2015 and demonstrated that at least part of the increase in the assessed value of the subject property was warranted for fiscal year 2017. The Presiding Commissioner determined that the land assessments attributed to the comparable-sale properties established a higher value than the value found by the Board for fiscal year 2015. However, the Presiding Commissioner found that the appellants met their burden of proving that the land value component of the subject property for the fiscal year at issue was excessive because the evidence showed unique limitations peculiar to the subject property relating to the shellfish grant holders’ failure to comply with statutory regulations that resulted in swimming and boating hazards. As a result, the Presiding Commissioner found that the subject property’s land component was excessive by approximately 10%, which, because the bulk of the value of the subject property was its land value, rendered the subject property’s overall assessment excessive.

Relying on the structure’s uncontested assessment of $17,500, the Presiding Commissioner adopted and maintained the value attributed to that component. In accordance with his findings, the Presiding Commissioner lowered the value of the portion of the assessment attributed to the subject property’s land component by $37,810, from $378,100 to $340,290. He then added the original assessment of $17,500 attributed to the subject property’s detached structure to reach an overall value of $357,790, which he then rounded up to $358,000. The Presiding Commissioner ultimately found that this value best represented the overall fair cash value of the subject property as of January 1, 2016, the valuation and assessment date for fiscal year 2017.

The Presiding Commissioner, therefore, decided this appeal for the appellant and granted an abatement in the amount of $305.95.

**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).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed.  ***Schlaiker v. Assessors of Great Barrington,*** 365  Mass. 243, 245 (1974) (citing ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The assessment is presumed valid unless the taxpayer proves otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting***Schlaiker***, 365 Mass. at 245).

If, however, the assessment at issue exceeds the Board’s prior determination of the subject property’s fair cash value for either of the two immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A, “the burden shall be upon the [assessors] to prove that the assessed value was warranted.” G.L. c. 58A, § 12A. Accordingly, because the Board’s fiscal year 2015 determination of value was less than the fiscal year 2017 assessed value for the subject property, the Presiding Commissioner ruled in this appeal that the burden of going forward to justify the increase in the subject property’s assessment was on the assessors. *See generally* ***Beal v. Assessors of Boston,*** 389 Mass. 648 (1983); *see also* ***Cressey Dockham & Co., Inc. v. Assessors of* *Andover,*** Mass. ATB Findings of Fact and Reports 1989-72, 86-87 (“Once a prior determination of the Board of the fair cash value of the same property [for one of the prior two fiscal years] has been placed in evidence, [] the statute requires [that the assessors] produce evidence to satisfy the Board that the increased valuation was warranted.”).

Notwithstanding this shift in the burden of production, the burden of persuasion on the issue of fair cash value still remains on a taxpayer to prove that the subject property’s fair cash value is less than the Board’s prior determination. *See* ***Johnson v. Assessors of Lunenburg***, Mass. ATB Findings of Fact and Reports 1992-1; ***Cressey Dockham***, Mass. ATB Findings of Fact and Reports at 1989-86-87.

In the present appeal, the assessors presented an analysis of three sales of purportedly comparable properties and their fiscal year 2017 land assessments. The Presiding Commissioner found that this analysis was helpful in justifying an increase, at least in part, in the Board’s finding of the subject property’s fair cash value for fiscal year 2015. The Presiding Commissioner further found, however, that the appellants met their burden of demonstrating that the subject property was overvalued for fiscal year 2017 because the evidence showed unique limitations peculiar to the subject property relating to the shellfish grant holders’ failure to comply with statutory regulations that resulted in swimming and boating hazards. Therefore, the Presiding Commissioner found that the subject property’s land component was excessive by approximately 10%, which rendered the subject property’s overall assessment excessive.

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 that single assessment is excessive.” ***Massachusetts General Hospital v. Belmont,*** 238 Mass. 396, 403 (1921). *See also* ***Chelmsford Mobile Home Properties, LLC v. Assessors of Chelmsford***, Mass. ATB Findings of Fact and Reports 2011-646, 667(citing ***Buckley v. Assessors of Duxbury,*** Mass. ATB Findings of Fact and Reports 1990-110, 119; ***Jernegan v. Assessors of Duxbury,*** Mass. ATB Findings of Fact and Reports 1990-39, 48-49; ***Everhart v. Assessors of Dalton,*** Mass. ATB Findings of Fact and Reports 1985-49, 54). In the present appeal, because the bulk of the subject property’s value was its land value, the Presiding Commissioner ruled that the excessive value attributed to the land component of the subject property’s assessment resulted in the assessors commensurately overvaluing the subject property’s assessment.

On this basis, the Presiding Commissioner decided this appeal for the appellants and granted an abatement in the amount of $305.95.

 **THE APPELLATE TAX BOARD**

 **By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. In the decision dated December 6, 2017, under the heading “Tax Assessed,” there was a clerical error and the correct amount is $3,219. This oversight has no bearing on the tax abatement granted. [↑](#footnote-ref-1)
2. This includes a Community Preservation Act surcharge in the amount of $93.76. [↑](#footnote-ref-2)