

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**KATHIE BOYLE &  
JOSEPH CARVALHO**

**v.**

**BOARD OF ASSESSORS OF  
THE CITY OF FALL RIVER**

Docket No. F337739

Promulgated:  
March 24, 2023

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 City of Fall River ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Kathie Boyle and Joseph Carvalho ("appellants") for fiscal year 2019 ("fiscal year at issue").

Commissioner Good ("Presiding Commissioner") heard the appeal and, pursuant to G.L. c. 58A, § 1A and 830 CMR 1.20, issued a single-member decision for the appellee.

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

*Joseph Carvalho, pro se*, for the appellants.

*Matthew Thomas, Esq.*, for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on testimony and documentary evidence submitted by the parties during the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2018, the valuation and assessment date for the fiscal year at issue, the appellants were assessed owners of a condominium, located at 919 Bay Street, Unit 51, in the City of Fall River ("subject condominium"). For the fiscal year at issue, the assessors valued the subject condominium at \$266,100 and assessed a tax thereon, at the rate of \$14.58 per \$1,000, in the total amount of \$3,916.07, inclusive of the Community Preservation Act surcharge. The appellants timely paid the tax due without incurring interest. On January 22, 2019, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the appellee, which the appellee denied on February 14, 2019. On May 9, 2019, the appellants seasonably filed an appeal with the Board. Based on these facts, the Presiding Commissioner found and ruled that the appellate Tax Board ("Board") had jurisdiction to hear and decide this appeal.

The subject condominium was built in 2011 and contains a total of 1,800 square feet of living area, including three bedrooms, as well as two full bathrooms and one half bathroom. The appellants purchased the subject condominium in December of 2013 for a stated price of \$248,700.

The appellants presented their case through the testimony of Joseph Carvalho ("Mr. Carvalho"). Mr. Carvalho testified that Fall River does not provide certain municipal services to the subject condominium that are enjoyed by other properties in the city, including trash removal, snow plowing, street lighting, and street maintenance. He argued that, because the subject condominium does not benefit from the same municipal services for taxes paid, it should be assessed at a value lower than other neighboring properties that do benefit from these services.

Mr. Carvalho also testified that the appellants had received a rebate at the closing of the subject condominium and thus claimed that the sale price should be deemed to be \$237,800. He further noted that the appellee had granted the appellants an abatement for fiscal year 2018, resulting in a fair cash value of \$247,200 for the subject condominium. Mr. Carvalho argued that the assessed value of the subject condominium should be decreasing over time, not increasing, because it is aging and thus depreciating in value. The appellants' opinion of value for the subject condominium as stated on the abatement application is \$220,000.

The appellee presented the testimony of Assessor Nelia Raposo, along with the requisite jurisdictional documents and property record cards for two condominium units in the same development as the subject condominium. The property record cards indicated that these units were substantially similar to the

subject condominium, with approximately 1,800 square feet of living area as well as two full bathrooms and one half bathroom. One unit sold for \$270,000 in September 2017 and the other for \$279,000 in December 2017.

Based on the evidence presented, the Board found that the appellants presented insufficient evidence to support a finding that the subject condominium was overvalued. The appellants did not present any market evidence to demonstrate the price at which a willing buyer would agree to purchase the condominium from a willing seller which, as will be explained in the Opinion below, is the standard for establishing fair cash value in appeals before the Board.

The appellee, on the other hand, presented evidence that two substantially similar units from the subject condominium's same development had sold close in time to the relevant assessment date - particularly the December 2017 sale for \$279,000 - which supported the assessed value of \$266,100 for the fiscal year at issue.

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 will agree if

both 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 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[] 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, taxpayers "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)). Here, the appellants' evidence consisted of Mr. Carvalho's testimony concerning a lack of municipal services and the supposed depreciation of the subject condominium.

The Board has consistently defined fair cash value with reference to arm's-length sales of property shown to be sufficiently like the subject property. See, e.g., ***Boston Gas Co.***,

334 Mass. at 566; **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 394, *aff'd*, 73 Mass. App. Ct. 1107 (2008) [Rule 1:28 Decision] ("The fair cash value of property may often best be determined by recent sales of comparable properties in the market."). The appellants, however, offered no valuation evidence to demonstrate what a willing seller and a willing buyer would agree to be a fair cash value of the subject condominium. Mr. Carvalho's testimony concerning municipal services and depreciation was not responsive to this question and thus did not constitute persuasive evidence for the Board in determining the subject condominium's fair cash value. See **Foster v. Assessors of Newton**, Mass. ATB Findings of Fact and Reports 2023-71, 76.

Moreover, the Board recently rejected consideration of municipal services for valuing real estate, finding this to be "an unworkable formula and would lead to arguments about the extent of use of municipal services, including local public schools, elder services, snow removal, street cleaning, and a host of other municipal services that some taxpayers may use while others do not." **Uhrich & Brogan v. Assessors of Wayland**, Mass. ATB Findings of Fact and Reports 2022-161, 175.

Conversely, the appellee presented evidence consisting of sales of two substantially similar condominium units from the subject condominium's same complex. These sales, which were close

in time to the relevant valuation and assessment date, supported the subject condominium's assessed value for the fiscal year at issue.

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellants did not meet their burden of proving that the assessed value of the subject condominium was greater than its fair cash value for the fiscal year at issue, and further that the evidence of record supported the contested assessment.

Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

**By: /s/ Patricia M. Good**  
**Patricia M. Good, Commissioner**

**A true copy,**

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