

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**SUMMER PLACE REALTY, LLC  
JOEL D'ERRICO, MANAGER**

**v.**

**BOARD OF ASSESSORS OF THE  
TOWN OF FRANKLIN**

Docket No. F345806

Promulgated:  
November 29, 2023

This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Franklin ("assessors" or "appellee") to abate a tax on certain real estate located in Franklin, owned by and assessed to Summer Place Realty, LLC, Joel D'Errico, Manager ("appellant"), for fiscal year 2022 ("fiscal year at issue").

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

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

*Joel D'Errico, pro se, for the appellant.*

*Kevin Doyle, Assessor, 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 Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 30,874-square-foot improved parcel of real estate located at 47 Summer Street in Franklin ("subject property"). The subject property is situated on a corner lot at the intersection of Summer Street and Winter Street in Franklin and is improved with two apartment buildings: 47 Summer Street ("Building A") and 11 Winter Street ("Building B"). Building A, which was built circa 1834, contains one two-bedroom apartment and nine one-bedroom apartments, with a total living area of 5,048 square feet. Building B was built in 2012 and contains eight one-bedroom apartments with a total living area of 5,995 square feet.

For the fiscal year at issue, the assessors valued the subject property at \$2,020,400 and assessed a tax thereon, at the rate of \$14.05 per thousand, in the total amount of \$28,386.62. The appellant timely paid the tax due without incurring interest. On January 18, 2022, the appellant timely filed an abatement application with the assessors, which the assessors denied on April 7, 2022. On May 1, 2018, the

appellant seasonably filed a petition with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Mr. D'Errico testified on behalf of the appellant as the manager of the subject property. First, the appellant argued that there was no justification for the increase in assessed value from the previous fiscal year because there were no changes to the subject property. However, on cross examination, Mr. D'Errico acknowledged that there had been an increase in rents.

The appellant also argued that the subject property's valuation, which is based on a value of \$112,244 per unit, is excessive. In support of its position, the appellant cited two purportedly comparable properties. Comparable number one, which is located at 130 Dean Ave, is a brick-veneer building that contains twelve one-bedroom apartments. This property was valued at \$1,089,300, or \$90,775 per unit, for the fiscal year at issue. Comparable number two is comprised of two parcels: 30-32 Chestnut Street, which is improved with a solid brick building that contains nine two-bedroom apartments, and 205 East Central Street, that features a wood-frame, stucco veneer building that contains five office units. The total assessed value for both parcels for the fiscal year at issue was \$1,357,900, or \$96,992 per unit.

Mr. D'Errico further testified that the apartments located in the cited comparable properties are of superior quality to those of the subject property, including granite countertops and stainless-steel appliances. In contrast, he testified, the subject apartments have formica counter tops and white appliances. Therefore, the appellant argued, the subject property should be valued at \$1,530,000, or \$85,000 per unit.

In addition to the testimony of Kevin Doyle, Assessor, the assessors submitted several documents, including the relevant jurisdictional documents and the appellant's actual income and expenses for calendar year 2020. The assessors also submitted income, vacancy rate, and expense tables, as well as an explanation of the calculation of the capitalization rate used in their computation, which were derived from information submitted to the assessors and used to determine the subject property's assessed value for the fiscal year at issue. With respect to the appellant's comparable number two, Mr. Doyle credibly testified that this property is classified as a mixed-use property and, therefore, is not comparable to the subject property.

On the basis of all the evidence, including testimony, exhibits, and reasonable inferences drawn therefrom, the Board found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal

year at issue. The Board found the appellant's evidence of only two purportedly comparable properties, one of which was in fact a mixed-use property and, therefore, not comparable, did not provide a persuasive indication that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. Moreover, the Board found that the assessors' evidence, which included the subject property's actual income and expenses for calendar year 2020, supported the subject property's assessment 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 all real property at its full and fair cash value. G.L. c. 59, § 28; **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 837 (1975). 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 its assessed value. "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[] 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)). “The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board.” ***Cumington School of Arts, Inc. v. Assessors of Cumington***, 373 Mass. 597, 605 (1977).

Based on the record in its entirety, the Board found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue. The appellant offered no evidence of flaws or errors in the assessors’ valuation and offered no affirmative evidence that undermined the assessed value for the fiscal years at issue. Moreover, the Board found that the assessors’ evidence, which included the subject property’s actual income and expenses

for calendar year 2020, supported the subject property's 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/ Mark J. DeFrancisco  
Mark J. DeFrancisco, Chairman

A true copy,

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