

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

JOHN W. DILLON

v.

**BOARD OF ASSESSORS OF
THE TOWN OF MARSHFIELD**

Docket No. F341206

Promulgated:
July 18, 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 Town of Marshfield ("assessors" or "appellee") to abate a tax on real estate located in the Town of Marshfield, owned by and assessed to John W. Dillon ("appellant") and Helen M. Dillon for fiscal year 2020 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellee.

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

John W. Dillon, pro se, for the appellant.

Anne Marie Sinnott, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2019, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed co-owner of a condominium unit with an address of 1 Crows Nest Lane #11 ("subject unit"). It is a single-story unit that contains 1,632 square feet of living area comprised of five rooms, including two bedrooms, as well as two full bathrooms and a three-quarter bathroom. The subject unit also includes an unfinished attic, an attached garage, a patio, and an open-frame porch. It was built in 2010 as part of the Pudding Hill Condominium ("Pudding Hill") which has a deed-restricted ownership and occupancy limited to occupants aged 55 years or older.

The assessors valued the subject unit at \$480,000 for the fiscal year at issue and assessed a tax thereon at a rate of \$13.33 per \$1,000, in the total amount of \$6,550.36, inclusive of the Community Preservation Act ("CPA") surcharge. The appellant paid the tax due without incurring interest. The appellant filed an abatement application with the assessors on January 30, 2020. The assessors denied the abatement application on March 16, 2020. The appellant timely filed an appeal with the County of Plymouth, Office of the County Commissioner ("County Commissioner") on June

9, 2020. The County Commissioner notified the assessors of the pending appeal, whereupon the assessors, in a letter dated June 18, 2020, elected to transfer the appeal to the Appellate Tax Board ("Board"), under G.L. c. 59, § 64. The County Commissioner properly forwarded the appeal to the Board. Based on this information, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The Appellant's Case

The appellant presented his case through his own testimony and documentary evidence. The appellant conceded that he was not contesting the "value, *per se*" of the subject unit. Rather, he based his appeal on the contention that, as a condominium unit owner, he believes that he receives fewer direct services from the Town of Marshfield than those provided to non-condominium residential property owners, and therefore the subject unit should not be taxed at the same rate as non-condominium residential properties.

The appellant pointed to several areas in which he argued that the subject unit does not directly benefit from services provided by the Town of Marshfield. Namely, he asserted that the streets and fire hydrants within Pudding Hill are maintained privately and that the Town of Marshfield provides neither trash pick-up services nor dump stickers to Pudding Hill. The appellant also noted that as part of an age-restricted community, he is not

allowed to have school-aged children or grandchildren living at the address; thus, he argued that his assessed property taxes are spent, in significant part, on schools that he does not and will not directly utilize.

Without introducing any evidence of comparable sales or assessments, the appellant offered his unsubstantiated opinion of value of the subject unit as \$240,000.

The Assessors' Case

The assessors provided relevant jurisdictional documents and the property record card for the subject unit. In addition, the assessors offered sales and assessment data for purportedly comparable Pudding Hill properties. Although no adjustments were offered to the properties, the data included five properties in Pudding Hill of similar size as the subject unit, ranging in size from 1,632 square feet to 1,635 square feet, with assessed values ranging from \$477,600 to \$491,100, in support of the assessed value of the subject unit at \$480,000.

The Board's Findings

Based on the record, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of establishing that the fair cash value of the subject unit was lower than its assessed value for the fiscal year at issue.

The appellant's opinion that the subject unit should not be taxed at the same rate as non-condominium residences because the

subject unit is not afforded the same services provided by the Town of Marshfield to non-condominium residential properties did nothing to establish the subject property's fair cash value for the fiscal year at issue. Indeed, the appellant acknowledged that he was not actually objecting to the "value, *per se*" of the subject unit, and he provided nothing to support a finding that the subject unit had a fair cash value less than its assessed value for the fiscal year at issue.

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

OPINION

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 upon which a willing seller and a willing buyer will agree where 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 proof in establishing 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 (citing **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellant failed to meet his burden of establishing that the subject unit had a lower fair cash value than its assessed value for the fiscal year at issue. In fact, the appellant acknowledged that he was not disputing the value of the subject unit. Instead, he focused solely on the value of the services provided by the Town of Marshfield that he was not receiving in comparison with other non-condominium properties.

The Presiding Commissioner rejected the suggestion by the appellant that the assessed value of the subject unit should be reduced based on what he argued was a lesser level of services provided by the Town of Marshfield to Pudding Hill as compared to the services provided to non-condominium residential properties in the Town of Marshfield. See **Uhrich & Brogan v. Assessors of Wayland**, Mass. ATB Findings of Fact and Reports 2022-161, 175 (ruling that linking real estate tax to the lack of certain

municipal services received by condominium owners is 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.").

The Presiding Commissioner therefore ruled that the appellant failed to expose flaws or errors in the assessors' method of valuation or introduce affirmative evidence of value which undermined the assessors' valuation. See *General Electric Co.*, 393 Mass. at 600.

Based upon the above and the record, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of proving that the fair cash value of the subject unit for the fiscal year at issue was lower than its assessed value. The Presiding Commissioner accordingly issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

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