

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

LARYSA DRUZHYNINA

v.

BOARD OF ASSESSORS OF
THE TOWN OF LEXINGTON

Docket No. F335279

Promulgated:
November 21, 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 Lexington ("assessors" or "appellee") to abate a tax on real estate located in Lexington, owned by and assessed to Larysa Druzhynina ("Ms. Druzhynina" or "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 ("fiscal year at issue").

Commissioner Good heard the appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Elliott joined her in the decision for the appellant.

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.

Larysa Druzhynina and Mykola Lysetsky, pro se, for the appellant.

Michael E. Golden, assistant 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.

On January 1, 2017, the relevant date of assessment for the fiscal year at issue, the appellant was the assessed owner of a 0.11-acre parcel of land, improved with a single-family dwelling, located at 15 Clelland Road in Lexington ("subject property"). For the fiscal year at issue, the assessors originally valued the subject property at \$763,000, and assessed a tax thereon, at the rate of \$14.30 per thousand, in the amount of \$10,910.10, inclusive of a Community Preservation Act ("CPA") surcharge.

On January 2, 2018, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors. On February 22, 2018, the assessors voted to grant a partial abatement, reducing the assessed value of the subject property to \$549,000. Not satisfied with this abatement, the appellant seasonably filed an appeal with the Board, in accordance with G.L. c. 59, §§ 64 and 65, on May 21, 2018. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is improved with a single-family dwelling ("subject dwelling") containing approximately 1,900 square feet of living area. The subject dwelling has seven total

rooms, including three bedrooms, along with two full bathrooms and one half bathroom. The subject dwelling was originally built in the early 1900s. In 2010, it was substantially renovated and expanded with the addition of a second story.

Building plans for this addition and the building permit signed by the town's Building Commissioner were entered into the record. Those documents showed that applicable building codes required basement supports to extend down four feet into the ground to support the subject dwelling's addition. A copy of the Certificate of Occupancy signed by the town's Building Commissioner on February 22, 2011 was entered into evidence. It purported to certify that the work on the subject property had been completed in accordance with the applicable building codes.

The appellant and her husband, Mykola Lysetsky, testified at the hearing of this appeal, and the Board found their testimony to be credible. They stated, and the evidence showed, that they purchased the subject property in August of 2016 for \$752,000. They did not have a home inspection in connection with their purchase of the subject property.

The appellant testified that shortly after purchasing the subject property, she began to notice moisture and mold in the partially finished basement of the subject dwelling. In the process of trying to discover the source of the moisture and mold, the area around the perimeter of the subject dwelling's foundation

was partially excavated, revealing that the requisite four-foot building supports were never installed. Instead, the subject dwelling's original stone foundation remained in place, but with significant damage. The evidence, including multiple photographs, showed that tree roots had grown into the foundation and portions of it were crumbling. Other photographs showed the extensive deterioration of the foundation, including loose stones and splintered wood, which allowed the mold and moisture to encroach upon the interior of the subject dwelling.

The appellant testified that the subject dwelling has required extensive renovation and repair as a result of the foundation issues. She stated that the subject dwelling's foundation has had to be replaced, one section at a time, so that the structure can remain intact. The appellant testified that the expense of replacing the subject dwelling's foundation, including the cost for replacing the paved walkways and landscaping that had to be removed, totaled approximately \$100,000. In addition, much of the finished space in the subject dwelling's basement, such as the drywall and flooring, has had to be removed because of the mold damage.

The appellant testified that she believes the mold issue has been contained and limited to the basement area, but she cannot be certain that mold has not spread to other areas of the subject dwelling. She further stated that although the subject dwelling

has remained habitable, she lives in fear that it will topple off of the foundation, as technically nothing is keeping it tethered to the foundation.

The appellant stated that she and her husband would not have paid what they did for the subject property had they known about the mold issue and the need to repair the foundation. She testified that the partial abatement and resulting \$3,060.20 reduction in tax did not, in her opinion, compensate for the costs associated with remediating the foundation issues, which approximated \$100,000. She further opined that the assessors should grant an additional abatement because the town's Building Commissioner improperly signed off on an occupancy permit without ensuring that the addition to the subject dwelling had been completed in compliance with applicable building codes.

The assessors for their part supported the assessed value of the subject property, as partially abated, by offering into evidence the following: interior photographs of the subject property taken in November of 2017; a property record card for the subject property; a Multiple Listing Service listing for the subject property from 2016; and the testimony of assistant assessor Michael Golden.

Mr. Golden testified that after conducting an inspection of the subject property in 2017, the assessors made several changes to the subject property's record card. First, they corrected what

had been an erroneous measurement of the square footage of the subject dwelling. Second, they added a factor to account for the subject property's steep topography and another factor to account for functional obsolescence. To account for the condition of the subject property, the assessors increased its depreciation factor, and they additionally changed the basement from "finished" to "unfinished."

In total, these changes reduced the assessed value of the subject property from \$763,000 to \$549,000. Mr. Golden testified that the assessors believed that this reduction adequately accounted for the damage to the subject dwelling caused by its inadequate foundation and the resulting mold damage.

On the basis of all the evidence, including the testimony, photographs, and other documents entered into the record, the Board found that the appellant met her burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. Although the appellant's purchase of the subject property in August of 2016 for \$752,000 was a timely sale, the evidence showed that the appellant was unaware at the time of purchase that the 2010 renovation and expansion of the subject dwelling had not been performed in accordance with applicable building codes. This failure resulted in significant foundation issues that in turn caused mold and moisture permeation in the subject dwelling's interior. The Board concluded that,

once discovered, these issues would need to be disclosed to a potential buyer of the subject property, thereby deflating its potential asking price. Although the assessors made certain adjustments to account for the condition of the subject property that reduced the assessed value, the Board concluded that their adjustments did not adequately reflect the full extent of the damage caused by the foundation issues.

Accordingly, the Board found that the appellant met her burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. Based on the record evidence, and exercising its own judgment, the Board found that the fair cash value of the subject property for the fiscal year at issue was \$400,000. The Board therefore issued a decision for the appellant in this appeal and granted an abatement of tax in the amount of \$2,194.62, inclusive of the CPA surcharge.

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 in a free and open market 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).

The appellant has the burden of proving that the property 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 the taxpayer[] . . . prov[es] the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

In appeals before this 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 the present appeal, the appellant introduced numerous exhibits, including building plans and photographs, detailing the condition of the subject property and the source of its problems, *i.e.*, foundation issues caused by the builder's failure to comply with applicable building codes during the renovation and expansion of the subject dwelling in 2010. Although the appellant was unaware of the foundation and mold issues when she purchased the subject property in 2016, the Board concluded that, now discovered, these

problems would have to be disclosed to a potential buyer and would likely decrease the marketability of the subject property. See **Bryan v. Assessors of Mattapoisett**, Mass. ATB Findings of Fact and Reports 2015-376, 388 (finding that additional reduction in a property's value was appropriate because mold issue would have to be disclosed to potential buyers); see also **Maglione v. Assessors of Wayland**, Mass. ATB Findings of Fact and Reports 2006-866, 871 (finding that a property's assessed value did not adequately reflect its contamination and structural issues).

"In reaching its opinion of fair cash value in this appeal, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight." **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 473, 469 (1981); **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 701-02 (1972).

The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v. Assessors of Malden**, 359 Mass. 196, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72 (1941). "The

credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the Board." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

The Board applied these principles in reaching its determination that the fair cash value of the subject property for the fiscal year at issue was \$400,000. The Board therefore issued a decision for the appellant in this appeal and granted an abatement of tax in the amount of \$2,194.62, inclusive of the CPA surcharge.

THE APPELLATE TAX BOARD

By 
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: 
Clerk of the Board