

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

FRANK E. & LINDA L. FALVEY

v.

BOARD OF ASSESSORS OF
THE TOWN OF FRANKLIN

Docket No. F346479

Promulgated:
February 7, 2024

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 Franklin ("appellee" or "assessors") to abate taxes on real property owned by and assessed to Frank E. and Linda L. Falvey ("appellants") for fiscal year 2022 ("fiscal year at issue").

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

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.²

Frank E. Falvey, pro se, for the appellants.

David Ruberti, Assessor, for the appellee.

¹ This citation is to the regulation in effect prior to January 5, 2024.

² This citation is to the regulation in effect prior to January 5, 2024.

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, 2021, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 0.344-acre parcel of land improved with a single-family residence with an address of 920 Pond Street in Franklin ("subject property"). Relevant jurisdictional information for this appeal is summarized below:

Original assessed value	Abated value	Tax rate Tax amount ³	Timely paid Y/N	Abatement application filed	Abatement application partially granted	Petition to the Appellate Tax Board
\$353,300	\$348,100	\$14.05/\$1,000 \$4,960.52	Y	01/25/2022	02/24/2022	05/10/2022

Based on the above information, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a Cape-style residence containing 1,344 square feet of living space, which is comprised of 6 rooms, including 4 bedrooms, as well as 2 full bathrooms ("subject residence"). The subject residence was constructed in 1961, and there have been no significant improvements since its construction. The subject property has an overall physical-

³ Total tax amount is inclusive of Community Preservation Act ("CPA") surcharge.

condition rating of "fair" according to the property record card on file with the appellee.

Prior to this appeal, the appellants successfully appealed the subject property's fiscal year 2020 assessment before the Board in Docket No. X309253. In that appeal, the Board determined the subject property's fair cash value to be \$302,700. Pursuant to G.L. c. 58A, § 12A ("Section 12A"), because the 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 2020 value determination.

The appellee presented its case through the testimony of David Ruberti, Assessor, and the submission of documents, including the requisite jurisdictional documents as well as property record cards for purportedly comparable properties.

The appellee presented a comparable-sale and comparable-assessment analysis featuring five purportedly comparable properties from the subject property's neighborhood. These properties were sold between April 2020 and June 2021 for prices ranging from \$398,000 to \$500,000, and their assessed values ranged from \$380,300 to \$397,600. The MLS sale listings included pictures and descriptions of the properties and demonstrated that several of these properties were updated. The appellee did not provide adjustments to these properties to account for any differences

between the comparable properties and the subject property that affect fair cash value.

The appellee also offered the revised property record card for the subject property, which was generated in conjunction with the appellee's granting of a partial abatement for the subject property. The revised property record card reflected a downgrade in condition from "average" to "fair" for the subject residence's two bathrooms and kitchen. However, the appellee did not coincidentally adjust the subject property's overall depreciation rate to account for these corrections.

The appellants presented their case through the testimony of Frank E. Falvey ("Mr. Falvey") and the presentation of documents, including: photographs of the subject property's interior and exterior; property record cards and MLS listings for several properties in the neighborhood that had recently sold; and valuation comparison charts prepared by the appellants. The Presiding Commissioner found that the evidence amply demonstrated that the condition of the subject property's kitchen and bathrooms, as well as its overall physical condition, were properly rated "fair," as recorded on the revised property record card. The Presiding Commissioner also found that the appellants adequately demonstrated the disparate condition of the subject property as compared with the appellee's comparable-sale properties.

Based on the record in its entirety, the Presiding Commissioner found that, while the appellee's properties were comparable in acreage and living area to the subject property, these properties were updated and in significantly better overall condition. Therefore, comparison with those properties without adjustments was not persuasive. The Presiding Commissioner further found that, while the assessors acknowledged errors in their original assessment of the subject property for the fiscal year at issue, those errors were not adequately remedied by the subsequent adjustments to the property record card. Therefore, the Presiding Commissioner found that the appellee did not meet its burden of proving an assessed value as abated of \$348,100, which was greater than the Board's fiscal year 2020 determination of \$302,700 for the subject property.

However, the Presiding Commissioner found that the evidence of record did establish a modest increase in overall property values in the subject property's neighborhood since fiscal year 2020. Based on the entirety of the record, the Presiding Commissioner found that \$315,000 represented the fair cash value of the subject property for the fiscal year at issue. This value affirms the Board's previous finding of the subject property's fair cash value while allowing for a modest increase in property values from fiscal year 2020.

Accordingly, the Presiding Commissioner issued a decision for the appellants ordering an abatement in the total amount of \$474.36, inclusive of the CPA surcharge.

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 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).

Generally, the burden 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) (quoting ***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). However, pursuant to Section 12A, if 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 "the burden shall be upon the [assessors] to prove that the assessed value was warranted." See ***Boudreau v. Assessors of Eastham***, Mass. ATB Findings of Fact and Reports 2019-138, 144-45. See also ***Cressey Dockham & Co., Inc. v. Assessors of Andover***,

Mass. ATB Findings of Fact and Reports 1989-72, 87 (If, for one of the prior two fiscal years, a determination of the fair cash value of the same property was made by the Board, "the statute requires the [assessors] to produce evidence to 'satisfy the board that the increased valuation was warranted.'"). In the present appeal, the assessment at issue falls within the two-year period set forth in Section 12A. Therefore, the assessors bore the burden of proving that the increase in the assessment from fiscal year 2020 was warranted.

The appellee offered property record cards for five purportedly comparable properties in the subject property's vicinity that had sold relatively contemporaneously to the relevant valuation date. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the fair cash value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 400, *aff'd*, 73 Mass. App. Ct. 1107 (2008). A comparable-sales analysis must include "fundamental similarities" between the subject property and the comparison properties. **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). "Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value." **New Boston Garden Corp. v.**

Assessors of Boston, 383 Mass. 456, 470 (1981). Here, the Presiding Commissioner found that the appellee's purportedly comparable properties were superior to the subject property in terms of their condition, yet the appellee provided no analysis of any adjustments made to these properties' sale values or assessed values to account for their superior condition. Without the appropriate adjustments, the appellee's reliance on these comparable properties was not warranted, because they did not provide a reliable indicator of the subject property's fair cash value. See, e.g., **Scott v Assessors of Swampscott**, 2009 Mass. ATB Findings of Fact and Reports 2009-532, 540.

Moreover, while the assessors acknowledged errors in their original assessment of the subject property for the fiscal year at issue, those errors were not adequately remedied by the subsequent adjustments made to the property record card. Compare, e.g., **Giurleo v. Assessors of Raynham**, Mass. ATB Findings of Fact and Reports 2011-358, 365 (finding that the assessors adequately accounted for the poor overall condition of the subject property by increasing the depreciation value).

The burden was on the appellee to justify an assessed value for the subject property that exceeded the Board's determination of fair-cash value of \$302,700 for fiscal year 2020. The Presiding Commissioner found that the appellee's flawed comparable-sales analysis failed to support the subject property's abated value of

\$348,100. However, the Presiding Commissioner found that the evidence of record demonstrated a modest increase in value for the properties in the subject property's neighborhood since fiscal year 2020. Based on the evidence in its entirety, the Presiding Commissioner found and ruled that \$315,000 represented the fair cash value of the subject property for the fiscal year at issue. This value reaffirms the Board's earlier finding of the subject property's fair cash value while allowing for a modest increase in property values from fiscal year 2020.

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 Consolidated Gas Co.***, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977). Therefore, the Board can base its determination of the subject property's fair cash value on the evidence of record as well as its own expertise. See ***Boston Consolidated Gas Co.***, 309 Mass. at 72.

Accordingly, the Presiding Commissioner issued a decision for the appellants ordering abatement in the total amount of \$474.36, inclusive of the CPA surcharge, for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: /S/ _____
Steven G. Elliott, Commissioner

A true copy,

Attest: /S/ _____
Clerk of the Board