

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

KEVIN FOLEY & LEAH FLANIGAN

v.

**BOARD OF ASSESSORS OF
THE TOWN OF CONCORD**

Docket No. F353021

Promulgated:
September 30, 2026

This is an appeal 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 Concord (“assessors” or “appellee”) to abate a tax on real estate owned by and assessed to Kevin Foley and Leah Flanigan (“appellants”) under G.L. c. 59, §§ 11 and 38 for fiscal year 2024 (“fiscal year at issue”).¹

Commissioner Elliott heard the appeal. Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier joined him in the 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 1.34.

Kevin Foley and Leah Flanigan, pro se, for the appellants.

Meredith Stone, Assessor, for the appellee.

¹ The appeal was originally filed under the informal procedure, but within thirty days of the date of service of the informal procedure, the appellee timely elected to have the appeal transferred to the formal docket. See G.L. c. 58A, § 7A.

FINDINGS OF FACT AND REPORT

Based on the testimony and evidence presented at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2023, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the owners of a 7,847-square-foot, “Custom Colonial”- style home² (“subject home”) situated on a 2.17-acre parcel at 134 Musterfield Road in Concord (together, “subject property”). The subject home was built in 2006 (with an effective year built of 2015) and has fifteen rooms, including seven bedrooms, six bathrooms, and two half bathrooms. The subject property also features a deck, patio, open porch, screened-in porch, in-ground pool, cabana, and three-car garage. The appellants acquired the subject property for \$3,575,000 in March 2021.

For the fiscal year at issue, the assessors valued the subject property at \$5,169,000 and assessed a tax thereon, at the rate of \$13.13 per thousand, in the amount of \$67,868.97, exclusive of the Community Preservation Act surcharge. The tax due was timely paid without incurring interest. On February 1, 2024, the appellants timely filed an abatement application with the assessors. By vote of the assessors on March 28, 2024, the assessors granted a partial abatement, reducing the assessed value to \$4,671,900.³ Seeking a further reduction in assessed value, the appellants filed this appeal with the Board. The statement under informal procedure was date stamped by the Board on July 5, 2024, in an envelope with a postmark of June 29, 2024, a day beyond the three months

² As described on the property record card.

³ The abatement certificate issued by the assessors contained the vote date and specifically instructed the appellants that an appeal to the Board “must be filed within three months of the date the assessors voted to allow your abatement.” The issue date of the certificate was April 4, 2024.

required by G.L. c. 59, §§ 64 and 65.⁴ Based on these facts, and as discussed further in the Opinion below, the Board found and ruled that the statement under informal procedure was not timely filed, thus depriving the Board of jurisdiction over this appeal.

The Board notes that even if it had jurisdiction over this appeal, the appellants would not have prevailed on the merits. The testimony and evidence presented by the appellants failed to establish a fair cash value less than the assessed value of the subject property for the fiscal year at issue. The appellants argued that the fair cash value for the fiscal year at issue should be \$3,325,000 or, at most, the purchase price of \$3,575,000 paid by the appellants in March 2021. In support of these proposed values, the appellants referenced five sales in their neighborhood that occurred in December 2021 and during calendar year 2022. They contended that for the fiscal year at issue, the assessed values for all five of these properties averaged 93 percent of the recent sale prices while the subject property had an assessed value (prior to the partial abatement) of 45 percent above the price paid by the appellants in March 2021, and that the subject property in turn should have an assessed value of no more than \$3,325,000 for the fiscal year at issue, or 93 percent of the sale price of \$3,575,000 paid by the appellants. The appellants made no adjustments to the sale prices or assessed values of the allegedly comparable properties to account for any differences between these properties and the subject property. No property record cards were introduced for these properties.

The appellants also claimed that the initial listing price for the subject property was \$5,250,000, and that after sitting on the market for a year with no offers, the prior owners accepted the appellants' offer of \$3,575,000, which was 32 percent less than the initial

⁴ June 28, 2024 fell on a Friday.

listing price. In further support of their position, the appellants touted numerous “negative issues” related to the subject property, from its proximity to the street and its location on a corner that precludes an “elegant circular driveway,” to a large swampy area on the subject property creating “an ideal breeding ground for mosquitos.” Additionally, the appellants contended that any renovations made to the subject home since the purchase were minor, consisting mostly of the addition of basement storage, and these renovations should have no impact on the value of the subject property.

Even if the Board had jurisdiction, none of the arguments and documents presented by the appellants would have established that the subject property was assessed at more than fair cash value for the fiscal year at issue. There would have been no basis upon which the Board could have determined a reduced assessment in the absence of adjusted sale prices and assessments for the appellants’ five allegedly comparable properties. Moreover, the appellants’ 93-percent factor that they sought to apply to the subject property’s assessed value was based upon their contention that the assessors had assessed these five properties at less than fair cash value. The standard for assessments is fair cash value, not below fair cash value. Further, the numerous interior and exterior issues raised by the appellants, even if true, had no quantifiable impact on the subject property’s fair cash value based on the testimony and documents in the record.

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

OPINION

The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). Adherence to statutory prerequisites is essential “to prosecution of appeal from refusals to abate taxes.” ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975); see also ***Old Colony R. R. Co. v. Assessors of Quincy***, 305 Mass. 509, 511-12 (1940).

General Laws c. 59, § 65 states in relevant part as follows:

A person aggrieved as aforesaid with respect to a tax on property in any municipality may, subject to the same conditions provided for an appeal under section sixty-four, appeal to the appellate tax board by filing a petition with such board within three months after the date of the assessors’ decision on an application for abatement as provided in section sixty-three . . .

See also G.L. c. 59, § 64.⁵

Though G.L. c. 59, § 65 includes a postmark rule – whereby the postmark date on an envelope shall be deemed to be the date of delivery if the petition is delivered after the date prescribed by G.L. c. 59, § 65 – here the postmark date itself occurred after the due date for filing the petition with the Board. Three months from the date of the assessors’ decision fell on Friday, June 28, 2024, while the envelope containing the appellants’ statement under informal procedure was postmarked June 29, 2024. This failure to timely file the statement under informal procedure deprived the Board of jurisdiction over this appeal. See ***Brooks v. Assessors of Worthington***, 87 Mass. App. Ct. 1132 (2015)

⁵ Of note, both G.L. c. 59, §§ 64 and 65 were amended in 1989 to specifically calculate the three months from the date of the assessors’ decision. Previously, the statutes calculated the three months from the date of receipt of notice of the assessors’ decision.

(“Under G. L. c. 59, § 65, the plaintiff had three months from March 27, 2012, the date of the assessors' decision, to appeal.”).

Even if the Board had jurisdiction over the appeal, the appellants provided no testimony or evidence to establish entitlement to a further reduction in the subject property's assessed value for the fiscal year at issue.

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). Here the appellants – using their 93-percent methodology – sought an assessed value even lower than fair cash value.

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 [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)). Here, the appellants provided no evidence of flaws or errors

in the assessors' method of valuation and introduced no affirmative evidence to undermine the assessors' valuation. See ***Fox v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2021-479, 483 (finding that evidence "of any quantifiable impact on the subject property's fair cash value was critically lacking").

The appellants introduced allegedly comparable properties but critically failed to account for any differences between the comparable properties and the subject property. See ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 402 ("The assessments in a comparable assessment analysis, like the sale prices in a comparable sales analysis, must . . . be adjusted to account for differences with the subject."), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (Rule 1:28 Decision); ***Lupacchino v. Assessors of Southborough***, Mass. ATB Findings of Fact and Reports 2008-1253, 1269 ("[W]ithout the appropriate adjustments . . . the assessed values of [comparable] properties did not provide reliable indicator[s] of the subject's fair cash value.").

Additionally, the appellants provided no quantification for alleged "negative issues" with the subject property. See, e.g., ***Abuzahra, Trustees v. Assessors of Rowley***, Mass. ATB Findings of Fact and Reports 2008-1514, 1522 (finding that taxpayers failed to meet their burden of proving overvaluation "because they failed to quantify the effects of wetlands or topographical issues on the value of their lots").

Accordingly, the Board found and ruled that it had no jurisdiction over this appeal and determined that the appellants nonetheless would have failed to meet their burden of proving that the fair cash value of the subject property was lower than its assessed value for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board