

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**ANDREW J. FOX AND LORI J. FOX v. BOARD OF ASSESSORS OF THE
TOWN OF LONGMEADOW**

Docket No. F338915

Promulgated:
December 23, 2021

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 Longmeadow ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Longmeadow owned by and assessed to Andrew J. Fox and Lori J. Fox ("appellants") for fiscal year 2019 ("fiscal year at issue").

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

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

Andrew J. Fox, pro se, for the appellants.

Jessica Guerra, 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 Presiding Commissioner made the following findings of fact.

On January 1, 2018, the relevant date of valuation for the fiscal year at issue, the appellants were the assessed owners of real property located at 29 Lorenz Street in the Town of Longmeadow ("subject property"). The subject property consists of a 0.2764-acre parcel of land improved with a Colonial-style residence containing 2,548 square feet of living area, including four bedrooms, two full bathrooms, and a half bathroom.

The assessors valued the subject property at \$389,600 for the fiscal year at issue and assessed a tax thereon at the rate of \$24.09 per \$1,000 in the amount of \$9,385.46. The appellants paid the tax due without incurring interest. The appellants filed an application for abatement with the assessors on January 28, 2019, which was denied on April 19, 2019. The appellants filed a petition with the Appellate Tax Board ("Board") on July 12, 2019. Based upon these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The appellants' contention was that the subject property's fair cash value was negatively impacted by dilapidated vehicles and other detritus located on a neighboring property. They testified to the condition of the neighboring property and offered

into evidence various photographs of the neighboring property, as well as book excerpts and articles concerning external obsolescence.

While the Presiding Commissioner found the appellants' testimony and evidence to be credible concerning the state of the neighboring property, he found that the appellants critically failed to provide evidence of any actual diminution in value to the subject property directly resulting from the condition of the neighboring property. Consequently, the Presiding Commissioner found and ruled that the appellants did not meet their burden of proof in establishing that the fair cash value of the subject property was lower than the assessed value for the fiscal year at issue and issued a decision for the appellee.

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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 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 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 taxpayers sustain[] 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)). In this appeal, the appellants provided no evidence of flaws or errors in the assessors' valuation and offered no affirmative evidence that

undermined the assessed value for the fiscal year at issue. While the Presiding Commissioner found that the appellants' testimony and evidence were credible as to the condition of the neighboring property, the lack of any quantifiable impact on the subject property's fair cash value was critically lacking. As the Board held in ***Nelson v. Assessors of Wilmington***, "[n]ot every nuisance resulting from living near neighbors must result in a reduction in fair market value." Mass. ATB Findings of Fact and Reports 2013-320, 342 ("[I]n the instant appeal, the Board found that the appellant failed to quantify any diminution in value resulting from activity on Poplar Street.").

In ***Pistorio v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2010-206, 209, the taxpayers contended that property across from the property at issue was an "eyesore" that negatively impacted the value of the property at issue, and they provided photographic evidence of "a brick building, painted black, with partially boarded-up windows and a dilapidated fire escape." ***Id.*** at 2010-210. They also alleged that a new business called The Dogfather, offering various dog-related products and services, generated much noise and foot traffic of both the human and canine variety. ***Id.*** The taxpayers opined that this "had an adverse impact on the quality of life in the neighborhood, because of the noise and also because dog droppings are frequently left behind" and they "testified that because of the additional noise

and traffic, they had to decrease their asking rent for one newly renovated unit from \$1,700 per month to \$1,375" and "they could not raise the rents for the other two units." *Id.* They also alleged that "two of the rental units were vacated because of the additional noise and traffic generated by The Dogfather." *Id.* The Board found that the taxpayers

introduced substantial, credible evidence documenting the deleterious effect that the arrival of The Dogfather . . . had upon the value of the subject property. Photographs entered into the record showed the extremely narrow width of North Margin Street and the close proximity of the buildings on it, as well as the unattractive facade of 51 North Margin Street, which directly faces the subject property. Given the narrowness of North Margin Street and the close proximity of all of the buildings on it, the Board found credible the appellants' testimony that the increase in traffic, noise, and dog droppings had a negative impact on the quality of life in the neighborhood, and in turn, a negative impact on the rental value of the subject property's apartment units.

Id. at 2011-12. In contrast, the appellants in this appeal provided no evidence by which the Board could directly attribute the condition of the neighboring property to a decrease in fair cash value of the subject property.

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In ***Andersen v. Assessors of Falmouth***, Mass. ATB Findings of Fact and Reports 2013-808, 819, the Board found ***Pistorio*** to serve "as a useful contrast to the instant appeal." The Board noted that in ***Pistorio***,

In addition to documenting the nature of the intrusion of the dog care facility, which produced noise and dog droppings, the taxpayers presented evidence demonstrating that the market for their rental units decreased after the facility opened. The owners prevailed in their claim for an abatement because this evidence provided the Board with an objective indicator that the presence of the dog care facility had decreased the fair cash value of the taxpayers' property.

Andersen, Mass. ATB Findings of Fact and Reports at 2013-820 (internal citation omitted). Contrasting ***Pistorio***, the Board found that the owner in ***Andersen*** "did not provide the Board with sufficient evidence, beyond her and her husband's personal experience at the subject property, to indicate that the wind turbine decreased the fair cash value of the subject property" and so "the Board found and ruled that the appellant neither 'expos[ed] flaws or errors in the assessors' method of valuation,' nor 'introduc[ed] affirmative evidence of value which undermine[d] the assessors' valuation.'" ***Andersen***, Mass. ATB Findings of Fact and Reports at 2013-820. See also ***Gordon v. Assessors of Newton***, Mass. ATB Findings of Fact and Reports 2010-1034, 1043 ("[T]hough the appellants claimed that the traffic and noise generated by The Teddy Bear Club, a daycare center which abutted the subject property, negatively impacted the subject property's fair cash

value, they failed to provide sufficient detail or information on this point, and further, did not quantify the alleged negative impact on the subject property's fair cash value."); **Belanger v. Assessors of Swansea**, Mass. ATB Findings of Fact and Reports 2013-1028, 1038 ("[T]he Presiding Commissioner gave no weight to the appellant's argument that the large cooling towers affiliated with a nearby power plant negatively impacted the subject property's views, and therefore, its fair cash value. The appellant introduced no evidence to quantify the impact on value, if any, created by the cooling towers, nor did he establish that the assessors had not already taken the presence of the cooling towers into consideration when valuing the subject property.").

The taxpayer in **O'Connell v. Assessors of Danvers**, Mass. ATB Findings of Fact and Reports 2009-131, 133, argued that her "property's fair cash value [was] adversely affected by the nearby tree-cutting business." She "testified that because of the commercial activities, there [was] considerable commercial truck traffic in the area and that large bucket trucks and other vehicles [were] routinely parked on the streets" and "that large logs from the tree-cutting business [were] often shredded on site and that the noise [could] be heard" from her property. **Id.** The taxpayer offered various photographs into evidence, but the Board found that she failed to "offer any evidence to demonstrate how, and to what extent, these activities negatively impacted the subject

property's fair cash value." *Id.* at 2009-134. Similarly in this appeal, the testimony and photographs of the dilapidated vehicles and detritus on the neighboring property provided the Presiding Commissioner with no evidence demonstrating how and to what extent the condition of the neighboring property negatively impacted the fair cash value of the subject property.

Based upon the above and the record in its entirety, the Presiding Commissioner found and ruled that the appellants failed to establish that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

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