COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

RONALD & KAREN GACICIA	**v.**	**BOARD OF ASSESSORS OF THE CITY OF BOSTON**
Docket No. F332382		Promulgated: July 9, 2019

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 City of Boston ("assessors" or "appellee") to abate a tax on a parcel of real estate located in the City of Boston, owned by Ronald and Karen Gacicia ("appellants") for fiscal year 2017 ("fiscal year at issue").

Commissioner Good heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Elliott joined her in a 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.

Peter Antell, Esq. for the appellants.

Laura Caltenco, Esq. 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, 2016, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a parcel of real estate consisting of a residential condominium unit located at 151 Tremont Street, Unit 7A ("subject property"). Relevant jurisdictional information is summarized in the following table:

Original valuation	Tax rate (per $1,000)	Tax amount	Taxes timely paid Y/N	Abatement application filed	Abatement application granted in part by assessors	Valuation as abated by assessors	Petition filed with Appellate Tax Board
$730,545	$10.59	$5,303.56[1]	Y	01/12/2017	04/10/2017	$686,600	04/26/2017

On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The appellants challenged the original valuation of the subject property, and the appellee subsequently reduced the valuation from $730,545 to $686,600. Not fully satisfied, the appellants sought a further reduction.

The subject property is part of the Tremont on the Common Condominium development ("Tremont on the Common"). As provided in

[1] This amount accounts for the residential exemption of $229,736.54 off the subject property's value.

Paragraph 9 of the Master Deed, the Tremont on the Common developer reserved for itself easements for indoor parking spaces ("parking easements") that it could assign to third parties for the use of parking spaces in the condominium's garage. The appellants purchased two parking easements ("parking easements at issue") from the developer at a price of $70,000 each. The issue raised by the appellants in the present appeal is whether the value of the parking easements at issue can be included in the assessed value of the subject property.

Paragraph 9 of the Master Deed specifies that the parking easements are property rights in gross and are not appurtenant to a condominium unit. The effect of this paragraph is that the right to a parking space in the parking easement areas of Tremont on the Common is exclusive to the parking easement owners, and not granted by virtue of owning a condominium unit. A condominium unit owner who does not have a parking easement may not park in the designated parking easement area of Tremont on the Common. Condominium unit owners who have been granted parking easements may transfer their easements to any third party. The parties agreed that the parking easements at issue each had a fair market value equal to their purchase price of $70,000, for a total value of $140,000 for the fiscal year at issue.

In support of their contention that the parking easements at issue should not be included in the subject property's assessment,

the appellants first claimed that the parking easements were interests in the common areas of the condominium and were thus not legally taxable to the individual condominium unit owners. The appellants further contended that the parking easements had to be assessed and billed separately from the condominium unit because they were not appurtenant to the condominium unit. They pointed out that after the fiscal year at issue, the assessors began to assess the parking easements at issue separately from the condominium unit and issued to the appellants a separate tax bill for each of the parking easements at issue.

For the reasons stated more fully in the Opinion below, the Board found and ruled that the parking easements at issue were properly included in the assessment for the subject property for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee.

OPINION

The issue to be resolved in this appeal is whether the parking easements at issue were properly included in the subject property's assessment as "real estate" pursuant to G.L. c. 59, § 2A. Section 2A(a) provides, in pertinent part, that "[r]eal property for the purpose of taxation shall include all land within the commonwealth and all buildings and other things thereon or affixed thereto,

unless otherwise exempted from taxation under other provisions of the law."

The appellants first contended that the parking easements at issue were not legally taxable pursuant to G.L. c. 183A, § 14, the provision governing the taxation of condominium units. This provision provides that "[e]ach unit and its interest in the common areas and facilities shall be considered an individual parcel of real estate for the assessment and collection of real estate taxes but the common areas and facilities, the building and the condominium shall not be deemed to be a taxable parcel." The appellants argue that the parking easements at issue are common areas that are already included in the overall value of their condominium unit, and therefore, increasing the subject condominium's assessment by their fair market value was essentially double taxation.

However, the Master Deed indicates that parking easements are not "common areas" of the condominium. Parking easements are separately delineated in Paragraph 9 of the Master Deed; they are not part of the "common areas" enumerated in Paragraph 6. Parking easements are specifically located on Floors LL1, LL2, 2, 3, 4, and 5 of the Tremont on the Common garage, and these areas "shall be for the exclusive use" of a parking easement owner.[2] Conversely,

[2] The Master Deed states that parking easements are either in reserved spaces or in unassigned spaces within the designated parking-easement areas. An easement in a reserved area entitles the parking-easement owner "to park in an

a resident of Tremont on the Common who does not own a deeded parking easement cannot park in the parking easement areas.

Furthermore, the Board and the Massachusetts Appeals Court have recognized that a parking easement created and transferred by a condominium developer is not part of a condominium's common area. ***Rauseo, Trustee v. Assessors of Boston***, 94 Mass. App. Ct. 517, 521 (2018) (affirming the Board's finding that parking easements reserved and freely alienable by a condominium developer and not appurtenant to any condominium unit are not part of a condominium's common area governed by G.L. c. 183A, § 14).

In the present appeal, the Board found and ruled that the parking easements at issue were not part of the condominium "common areas." The Master Deed specifies that parking easements are in gross, not appurtenant to the condominium complex or any individual unit, and that owners may freely transfer their parking easements, even to third parties outside of the condominium complex. The appellants paid for the parking easements at issue separately from their condominium unit, and they would have no right in the parking easement areas of the condominium absent the deeded easements. Accordingly, the parking easements at issue were not included in the subject property's assessment as "common areas" pursuant to

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individual space" located on a plan of the garage, while unassigned parking easements entitle the owner "to park in areas shown on the Plans as 'unassigned.'"

G.L. c. 183A, § 14, and inclusion thus did not amount to double taxation.

The appellants next contend that the assessors should have issued separate tax bills for the parking easements at issue rather than including them in the subject property's assessment, because they are not appurtenant to the subject property. In support of this contention, the appellants offered a 2002 letter from Daniel J. Murphy, then Chief of the Department of Revenue Division of Local Services ("DLS"), to the City of Boston assessors ("2002 DLS letter"). In response to an inquiry from the Boston assessors, Mr. Murphy opined that "[s]ince the easements are not appurtenant interests of the condominium units, they must be assessed separately" from the condominium unit by means of a separate tax bill.

The Board does not read the 2002 DLS letter as creating an enforceable mandate to tax condominium parking easements separately. First, the 2002 DLS letter reflected an opinion of one individual Department of Revenue employee. *See, e.g.*, ***Nantucket Islands Land Bank Commission v. Assessors of Nantucket***, Mass. ATB Findings of Fact and Reports 2002-659, 267-68 (declining to follow a letter of opinion from then Chief of Department of Revenue's Property Tax Bureau). Moreover, Mr. Murphy admitted in the 2002 DLS letter that this statement was not based on any "explicit authority," but instead on his interpretation of previous cases.

Second, assessors have broad discretion not only in how to value property but also in how to assess. In ***Boston Edison Co. v. Assessors of Boston***, 402 Mass. 1, 9-10 (1988), the Supreme Judicial Court upheld the assessors' classification of the taxpayer's generating plant as real estate, not personal property, based "on the theory that the assessors had a choice as to the taxable category in which to place" taxable property. In ***Indianhead Penny LP v. Assessors of Edgartown***, Mass. ATB Findings of Fact and Reports 2011-680, 697, the Board rejected the taxpayer's argument that the Edgartown assessors were required to tax the parcels there as a single parcel instead of four separate parcels, finding that the assessors "may make reasonable assumptions and determinations" when assessing property. ***Id.*** at 2011-703 (citing ***Irving Saunders Trust v. Assessors of Boston***, 26 Mass. App. Ct. 838, 843 (1989)). In recognition of the assessors' discretion, the Board in this appeal found and ruled that it was not error for the appellee to include the values of the parking easements at issue in the assessment for the subject property, rather than to issue separate assessments for each item of property.

Moreover, there is no justification, statutory or otherwise, for the appellants' conclusion that otherwise taxable property may escape taxation, simply because the appellee did not issue separate tax bills for the parking easements at issue. The appellants point to no support for their far-reaching conclusion. *Contrast* G.L. c.

60, § 3; *see also* ***Boston v. DuWors***, 340 Mass. 402, 404 (1960) (finding that "the liability to pay the tax was not conditioned on the sending of a bill").

For all of the foregoing reasons, the Board found and ruled that the appellants failed to meet their burden of proving that the inclusion of the parking easements at issue in the value of the subject property rendered the subject property's assessment invalid. *See* ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: _____
Clerk of the Board