COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ERICH AND ANGELA GARGER	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF GROTON**
Docket No. F338514		Promulgated: April 25, 2022

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 Groton ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Groton owned by and assessed to Erich and Angela Garger ("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.

Erich Garger, *pro se*, for the appellants.

Jonathan Greeno, 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.

I. Introduction and jurisdiction

On January 1, 2018, the relevant date of valuation and assessment for the fiscal year at issue, the appellants were the assessed owners of real property located at 46 Redskin Trail in the Town of Groton ("subject property"). The subject property consists of a 7,000-square-foot parcel of land improved with a Colonial-style residence containing five rooms, including two bedrooms as well as one and a half bathrooms.

The assessors valued the subject property at $220,500 for the fiscal year at issue and assessed a tax thereon at the rate of $18.11 per $1,000 in the amount of $3,993.26, exclusive of the Community Preservation Act surcharge of $65.47. The appellants paid the tax due and did incur some interest, but this did not impact jurisdiction because the tax for the fiscal year was not more than the $5,000 threshold set forth in G.L. c. 59, § 64. The appellants filed an abatement application with the assessors on January 28, 2019, which was denied by the assessors on March 22, 2019. The assessors did not issue a denial notice to the appellants until April 11, 2019, in noncompliance with

the ten-day notice provision of G.L. c. 59, § 63. Consequently, the Presiding Commissioner found that the appellants were allowed a reasonable time for appeal, and that the filing of their petition with the Appellate Tax Board ("Board") on June 26, 2019, was timely. *See* ***Boston Communications Group, Inc. v. Assessors of Woburn***, Mass. ATB Findings of Fact and Reports 2011-780, 784 ("Because the assessors failed to give notice of their denial within ten days, as required by § 63, the Board found that the date of the notice of abatement denial was 'ineffective for the purpose of determining when to commence the running of the three-month appeal period.'") (citation omitted). Based upon the foregoing, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

II. The appellants' case

The appellants contended that the subject property's fair cash value was negatively impacted by an illegal tree service company located on property in the vicinity of the subject property ("tree service company property"). They offered into evidence a map detailing the location of the subject property in relation to the tree service company property; photos of vehicles and debris on the tree service company property; and a series of letters from the Groton Building Commissioner/Zoning Enforcement Officer to the owners of the tree service company

property, instructing them to cease and desist their unpermitted business. The appellants testified that Groton officials had taken no action apart from these letters, despite complaints by the appellants and others living in the area.

III. The appellee's case

Apart from the jurisdictional documents, the assessors entered into evidence an override form for the subject property indicating a "10% off value each yr due to neighbor," but otherwise rested on the presumed validity of the assessment.

IV. The Presiding Commissioner's findings

While the Presiding Commissioner found the appellants' testimony and evidence to be credible concerning the state of the tree service company 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 tree service company property. Conversely, the assessors introduced a document indicating that they have provided the appellants with a reduction of 10 percent each year due to the tree service company property. The Presiding Commissioner found no basis for further reductions. 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 he decided this appeal in favor of the appellee.

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 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)). In the present 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 regarding the condition of the tree service company property were credible, critically lacking was any quantifiable impact of that condition on the fair cash value of the subject property. Further, the assessors introduced evidence indicating that they had already provided a reduction in assessed value due to the tree service company property. The appellants provided no basis for another reduction. *See* ***O'Connell v. Assessors of Danvers***, Mass. ATB Findings of Fact and Reports 2009-131, 133 (In a case involving a tree-cutting business, the Board found that the taxpayer failed to "offer any evidence to demonstrate how, and to what extent, these activities negatively impacted the subject property's fair cash value."). *See also* ***Fox v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2021-479, 483.

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