COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PENELOPE GIANAKOURAS & CARL WIGHARDT	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF NORTH ANDOVER**

Docket No. F334930

Promulgated:
October 31, 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 Town of North Andover ("assessors" or "appellee") to abate a tax on real estate located in the Town of North Andover, owned by Penelope Gianakouras and Carl Wighardt ("appellants") for fiscal year 2018 ("fiscal year at issue").

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

Thomas C. Tretter, Esq. and *Timothy J. Schiavoni,* Esq. for the appellants.

David Hynes, 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 Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2017, the appellants were the assessed owners of a 1.01-acre parcel of real estate improved with a single-family dwelling ("subject dwelling") located at 790 Dale Street in North Andover ("subject property"). Dale Street is a main roadway that crosses through North Andover in an east-west direction. Abutting the subject property is Smolak Farms, which hosts a number of public uses described below.

The subject dwelling is a two-story, Colonial-style dwelling containing 3,045 square feet of living area and is comprised of nine rooms, including five bedrooms, as well as two full bathrooms and one half bathroom. Amenities include an attached two-car garage, two fireplaces, a rear wooden deck, a patio, and an open front porch. The assessors categorized the subject dwelling as being of average quality and good condition.

For the fiscal year at issue, the assessors valued the subject property at $506,300 and assessed a tax thereon, at the rate of $14.53 per thousand, in the total amount of $7,533.65.[1] In accordance with G.L. c. 59, § 57C, the appellants paid the

[1] The tax amount includes a Community Preservation Act ("CPA") surcharge of $177.11.

tax due without incurring interest. On January 26, 2018, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which the assessors denied on February 1, 2018. In accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed an appeal with the Board on May 1, 2018. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

In support of their claim that the subject property was overvalued for the fiscal year at issue, the appellants offered into evidence numerous exhibits including: several printouts from Smolak Farms' website that provide a history of the farm, a listing of events offered, and photographs of the function tent; copies of public records for calendar years 2014 through 2018 for private duty police schedules and calls for noise and disturbance associated with Smolak Farms; a listing of one-day alcoholic beverage licenses that were issued to Smolak Farms during calendar years 2014 through 2018; an acoustical review of Smolak Farms dated April 2014; and correspondence from Smolak Farms to the North Andover Licensing Commission outlining the actions taken to limit sound levels.

The appellants argued that the activities at Smolak Farms are a nuisance that negatively affects the subject property's fair cash value. Carl Wighardt testified that since he and his wife purchased the subject property in 2003, the owners of

Smolak Farms have expanded the workable area for fruit crops by removing large forested areas, which had acted as a buffer with the subject property. He further testified that Smolak Farms now hosts numerous events, including weddings, birthday parties, themed dinners, tours, hayrides, and festivals. In addition, there is a farm stand, a bakery, and an ice cream stand located on the property. Mr. Wighardt testified that the increased activities have resulted in excessive noise, disturbances, traffic jams, and violations of the restrictions imposed by the town, which have negatively impacted the fair cash value of the subject property.

The appellants also offered the testimony and report of Kristen-Anne Leone, a certified real estate appraiser. Ms. Leone did not perform an appraisal of the subject property. Instead, she compared the land assessments for properties located on May Street, which is adjacent to railroad tracks; properties located on Belmont Street, which is one street away from railroad tracks; and properties purported to be located in the general downtown area of North Andover. Comparing properties of similar lot size in North Andover not located in high traffic or noisy areas, Ms. Leone extracted land assessment reductions between 13.60 percent and 14.36 percent, which she attributed to the former properties' proximity to railroad tracks or downtown and the resulting external obsolescence. Based on her analysis, Ms.

Leone opined that the subject property's location similarly warranted a 14 percent reduction in value attributable to the noise and disturbances associated with neighboring Smolak Farms.

For their part, the assessors submitted the requisite jurisdictional documentation and also the property record cards for six properties, including the subject property, that abut Smolak Farms. The properties varied in size from 1.01 acres to 1.23 acres and were improved with dwellings ranging in size from 1,537 square feet to 3,045 square feet of living area. The assessed values ranged from a low of $166.27 per square foot of living area, the subject property's value, to $269.95 per square foot of living area.

On the basis of the evidence presented, the Board found that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. The Board found that Ms. Leone's methodology - comparing land assessments of properties located on different streets in North Andover - failed to establish that differences in value were, in fact, attributable to disturbances. The Board further found that Ms. Leone failed to establish that a straight percentage reduction in land value derived from her analysis was an appropriate methodology to use to account for disturbances. Even if the appellants' land assessment comparison were viable, the ultimate question is whether the overall assessment is

excessive. The Board found that the appellants' sole focus on the subject property's land value failed fully to address and substantiate why the subject property's overall assessment was excessive. Moreover, the Board found that the appellants failed to offer any affirmative evidence of value such as comparable sales or assessments. Lastly, the Board found that the subject property was assessed at a lower per-square-foot value than other properties abutting the farm.

Accordingly, based upon the record in its entirety, the Board found that the appellants failed to meet their burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue and, therefore, issued a decision for the appellee.

OPINION

Assessors are required to assess all real property at its full and fair cash value. G.L. c. 59, § 28; ***Coomey v. Assessors of Sandwich***, 367 Mass. 836, 837 (1975). Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market 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 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 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 . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before this 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 Board found that the methodology employed by the appellants' real estate valuation expert - comparing land assessments of properties located on different streets in North Andover - failed to establish that differences in value were, in fact, attributable to disturbances. The Board further found that Ms. Leone failed to establish that a straight percentage reduction in land value derived from her analysis was an appropriate methodology to use to account for disturbances.

The Board additionally found that even if the land assessment comparison were viable, Ms. Leone failed to prove

that the subject property's overall assessment was excessive. Taxpayers do not establish the right to abatement merely by showing that either the land or a building is overvalued; they must demonstrate that the overall assessment overstated the fair cash value of the subject property. *See* ***Anderson v. Assessors of Barnstable,*** Mass. ATB Findings of Fact and Reports 1999-596, 601. "In abatement proceedings, 'the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether the single assessment is excessive.'" ***Id.*** at 1999-601-02 (quoting ***Massachusetts General Hospital v. Belmont,*** 238 Mass. 396, 403 (1921)).

Moreover, the Board found that the appellants failed to offer any affirmative evidence of value such as comparable sales or assessments, and the evidence of assessed values submitted by the assessors showed that the subject property was assessed at a lower per-square-foot value than other properties abutting the farm.

Accordingly, based upon the record in its entirety, the Board found and ruled that the appellants failed to meet their burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue and, therefore, issued a decision for the appellee.

THE APPELLATE TAX BOARD

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

A true copy:

Attest: _____
Clerk of the Board