

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

GREAT FALLS REALTY TRUST

v.

BOARD OF ASSESSORS OF  
THE TOWN OF MONTAGUE

Docket Nos. F347525 & F347526

Promulgated:  
August 9, 2024

These are appeals 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 Montague (“assessors” or “appellee”) to abate taxes on two parcels of real estate owned by and assessed to Great Falls Realty Trust (“appellant”) for fiscal year 2022 (“fiscal year at issue”).

Commissioner Bernier (“Presiding Commissioner”) heard these appeals and, in accordance with G.L. c. 58A, § 1 and 831 CMR 1.20,<sup>1</sup> issued single-member decisions 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.<sup>2</sup>

*Curtis Sherrer, Trustee, pro se, for the appellant.*

*Karen Tonelli, assessor, for the appellee.*

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<sup>1</sup> This citation is to the regulation in effect prior to January 5, 2024.

<sup>2</sup> This citation is to the regulation in effect prior to January 5, 2024.

## FINDINGS OF FACT AND REPORT

Based on testimony and exhibits admitted into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

On January 1, 2021, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of two parcels of land in the Town of Montague, a 0.81-acre parcel located at 44 Canal Road and a 0.4-acre parcel located at 42B Canal Road that are the subject of these appeals (collectively "subject properties") as well as a 0.339-acre parcel improved with an industrial and retail building located at 42A Canal Road that is not at issue in these appeals.<sup>3</sup> Jurisdictional information for these appeals is summarized in the chart below.

Property address	Assessed value	Timely paid	Tax rate/ Tax amount	Abatement application filed	Abatement denied	Petition filed
44 Canal Road	\$108,400	Y	\$29.76/\$1,000 \$3,225.98	04/04/2022 <sup>4</sup>	06/27/2022	09/27/2022 <sup>5</sup>
42B Canal Road	\$120,900	Y	\$29.76/\$1,000 \$3,597.99	04/04/2022 <sup>6</sup>	06/27/2022	09/27/2022 <sup>7</sup>

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<sup>3</sup> Following a hearing on the appellee's motion to dismiss, the Board dismissed the appeal involving this parcel for lack of jurisdiction.

<sup>4</sup> This was the due date of the first installment of the semi-annual actual tax bill for the subject properties.

<sup>5</sup> While the petition was stamped as having been docketed by the Board on September 30, 2022, the envelope containing the petition bore a United States Postal Service postmark of September 27, 2022. Pursuant to G.L. c. 58A, § 7, the Presiding Commissioner considered the date of the postmark to be the date of filing.

<sup>6</sup> See *supra*, note 4.

<sup>7</sup> See *supra*, note 5.

Based on the information above, the Presiding Commissioner found and ruled that the Appellate Tax Board ("Board") had jurisdiction over these appeals.

A temporary construction easement at 42 Canal Road was set forth in a Notice of Taking by Eminent Domain recorded with the Registry of Deeds on July 28, 2021. The 3,619-foot easement area was primarily located on 42A Canal Road, the parcel that is not at issue in these appeals. The appellant claimed that it was impossible to lease the space at 42A Canal Road, because the easement impacted the entrance and parking areas of the subject properties. The appellant argued that the subject properties, together with 42A Canal Road, were all rendered worthless during the duration of the easement.

As will be discussed in the following Opinion, the date for valuation and assessment of real property is January 1 of the year that precedes the fiscal year at issue, which for these appeals was January 1, 2021. As of that date, the temporary taking by construction easement had not yet occurred. The temporary easement was the only evidence that the appellant offered for its argument that the subject properties were overvalued for the fiscal year at issue. Because the temporary easement was not in effect as of the relevant valuation and assessment date, the Presiding Commissioner found that it did not impact the subject property's valuation for the fiscal year at issue.

The Presiding Commissioner thus found and ruled that the appellant failed to meet its burden of proving fair cash values for the subject properties that were lower than their assessed values for the fiscal year at issue. Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

### OPINION

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 in a free and open market will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant claimed that the subject properties had no value during the fiscal year at issue. In support of this contention, the appellant argued that the construction easement compromised access to the subject properties and thus rendered the subject properties worthless.

The construction easement took effect on July 28, 2021, over six months after the relevant valuation and assessment date for the fiscal year at issue. As the Appeals Court explained in ***Turners Falls L.P. v. Assessors of Montague***, 54 Mass. App. Ct. 732, 732, note 1 (2002):

[In Massachusetts, t]he date on which assessors determine the fair cash value of real property is January 1 of each year. G.L. c. 59, § 2A. Real property is assessed to its owner as of January 1. G.L. c. 59, § 11. Taxes are then billed on the basis of a tax year or fiscal year that runs from the following July 1 to June 30. G.L. c. 44, § 56.

The Board has previously held that factors occurring after the relevant valuation and assessment date are not persuasive evidence of a property's fair cash value for the fiscal year at issue. See, e.g., *Briarwood Thirteen, LLC v. Assessors of Springfield*, Mass. ATB Findings of Fact and Reports 2018-520, 524-5 (finding that the release of a map that mistakenly portrayed the subject properties as slated for demolition and road closures caused by construction were not factors as of the relevant valuation date, and therefore not persuasive evidence of the property's valuation). Therefore, the construction easement was not relevant to the instant appeal.

The burden of proving a value that is lower than the assessed value is firmly on the taxpayer. See *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). The Presiding Commissioner found and ruled that, having submitted only irrelevant evidence in support of its appeals, the appellant failed to meet its burden of proving a value for the subject properties that was less than their assessed values for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

**THE APPELLATE TAX BOARD**

By: /S/   
Nicholas D. Bernier, Commissioner

A true copy,

Attest: /S/   
Clerk of the Board