COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

COURTLAND L. HARLOW III AND DANIEL J. HARLOW, TRUSTEES OF 3 BLAIR DRIVE TRUST	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF KINGSTON**
Docket No. F334750		Promulgated: July 23, 2020

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Kingston ("assessors" or "appellee") to change the designation of certain real estate located in Kingston owned by and assessed to Courtland L. Harlow III and Daniel J. Harlow, Trustees of 3 Blair Drive Trust ("appellants") from unbuildable land to buildable , for fiscal year 2017 ("fiscal year at issue").

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

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.

John J. Hightower, Esq. for the appellants.

Adam J. Costa, Esq. and Meredith Rafiki, assistant 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, 2016, the relevant date of valuation and assessment for the fiscal year at issue, the appellants were the assessed owners of 3 Blair Drive ("subject property"), a parcel of vacant land.

For the fiscal year at issue, the appellee valued the subject property at $4,800 and assessed a tax thereon at the rate of $16.50 per $1,000, for an assessment of $79.20. The appellants timely paid the tax due without incurring interest. In accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application on February 1, 2017. Although the appellee introduced into evidence a notice mailed on April 5, 2017, indicating that the appellants' abatement application had been denied on April 4, 2017, the appellants claimed that they did not receive notice of the denial until they reached out to the appellee via email on July 13, 2017. Thereafter, on July 31, 2017, the appellants filed with the Board a petition for late entry of appeal under G.L. c. 59, § 65C, which the Board allowed. The appellants then filed their Petition Under Formal Procedure on February 21, 2018.[1] Accordingly,

[1] Although the Board's October 31, 2017 Order allowing the appellants' petition for late entry of appeal required the appellants to file their appeal within

the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The subject property is a 10,800-square-foot parcel of vacant land. The appellants claimed that the assessors incorrectly changed the classification of the subject property from buildable land to unbuildable land without notification or justification after the appellants purchased the subject property.

The appellants purchased the subject property in December 2012. They later discovered that a prior owner had applied for and been denied a permit to build a single-family residence on the subject property. When the appellants brought this information to the attention of the assessors, the classification of the subject property was changed from buildable to unbuildable, resulting in a reduction in the assessed value of the subject property. Critically, in the present appeal, the appellants neither challenged the assessed value of the subject property as exceeding its fair cash value nor provided evidence of overvaluation. Conversely, the appellants sought a change in the subject property's classification that would result in an increase rather than decrease in its assessed value.

The assessors claimed that the subject property was currently assessed at five percent of its total land value and that it was

twenty days of the Order, the Board exercised its discretion to allow the appellants additional time to file their appeal.

worth more than its assessed value, in particular to an abutting property owner. They contended that ownership of the subject property would give an abutting lot more privacy, as well as more space for expansion of a yard. The assessors also noted that the classification of the lot as unbuildable is based on a 2007 Zoning Board of Appeals decision[2] finding that the lot was too small. In addition, the assessors maintained that they have no authority over determining the buildability of a lot, only with managing and updating changes regarding buildability of land as information is provided to the assessors by appropriate town departments.

Based upon the above, the Presiding Commissioner found that the relief requested by the appellants here was not an abatement but rather the reclassification of the subject property from unbuildable to buildable, a change that would increase rather than decrease the assessed value of the subject property. In the absence of a claim of overvaluation or entitlement to an abatement, the appellants were not seeking a remedy for which relief could be granted by the Board. Accordingly, the Presiding Commissioner issued a decision for the appellee.

[2] The 2007 Findings and Decision from the Office of Kingston Board of Appeals, entered into the record, concerned a variance requested from the Zoning Board of Appeals by a prior owner of the subject property seeking to build a single-family home on the subject property. The Zoning Board of Appeals denied the request and found that it could not grant the relief requested without substantially deviating from the intent of the zoning by-laws.

OPINION

The assessors are required to assess real estate at its full and 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 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 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)).

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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). In the present appeal, the appellants provided no evidence of overvaluation and made no claim for an abatement. Rather, they requested a reclassification of the subject property – from unbuildable to buildable - that would conversely increase the value of the subject property.

Pursuant to G.L. c. 59, §§ 64 and 65, a "person aggrieved by the refusal of the assessors to abate a tax on . . . a parcel of real estate" may appeal to the Board and the Board is authorized to make "a reasonable abatement" if the taxpayer establishes the right to such abatement. Here, the appellants are not "persons aggrieved by the refusal of the assessors to abate a tax" within the meaning of §§ 64 and 65 because they did not seek an abatement from the assessors and or in the present appeal.

Based upon the evidence presented, the Presiding Commissioner found and ruled that the relief requested by the appellants was not relief that could be granted by the Board. Accordingly, the Presiding Commissioner issued a decision for the appellee.

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