

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**COURTLAND L. HARLOW III AND
DANIEL J. HARLOW**

**v. BOARD OF ASSESSORS OF THE
TOWN OF KINGSTON**

Docket No. F334486

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 abate a tax on certain real estate located in the Town of Kingston owned by and assessed to Courtland L. Harlow III and Daniel J. Harlow ("appellants") for fiscal year 2017 ("fiscal year at issue").

Commissioner Elliott heard this appeal and was joined in his decision for the appellee by Chairman Hammond and Commissioners Scharaffa, Rose, and Good.

These findings of fact and report are promulgated pursuant to requests by the appellants and the appellee 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 Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2016, the relevant date of valuation for the fiscal year at issue, the appellants were the assessed owners of a parcel of vacant land located at 24 Sunset Road ("subject property"). The subject property is a 21,870-square-foot waterfront lot that had previously comprised two lots, according to a copy of the deed entered into the record: 12R Sunset Road and 24 Sunset Road, both formerly improved with single-family dwellings. Prior to the relevant valuation date, the dwelling on 12R Sunset Road was demolished and the lot graded over, and the dwelling on 24 Sunset Road was razed, although the original foundation still existed during the fiscal year at issue.

For the fiscal year at issue, the assessors valued the subject property at \$585,500 and assessed a tax thereon at the rate of \$16.50 per thousand, in the amount of \$9,740.86, inclusive of a Community Preservation Act surcharge. The appellants timely paid the tax due without incurring interest. On February 1, 2017, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which was deemed denied on May 1, 2017. In accordance with G.L. c. 59, §§ 64 and 65, the appellants timely filed their Petition Under Formal Procedure with

the Board on July 31, 2017. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear this appeal.

The appellants contended that a fifteen-foot right of way on the subject property - extending through the subject property and onto an adjacent parcel identified as 9 Pebble Lane - was not properly reflected in the assessed value for the fiscal year at issue, and that a value of \$442,500 was more indicative of fair cash value. The appellants claimed that the right of way was used on a fairly regular basis by the owners of 9 Pebble Lane for access purposes even though the main access to 9 Pebble Lane is from Pebble Lane. They introduced photographs of the subject property and a plan showing the right of way, as well as a copy of the "Kingston MA Fiscal Year 2017 Residential Land Guidelines," which states that for access/easements and rights of way a condition factor is typically entered "as 85 to 95% good." The appellants reasoned that this phrase supported an adjustment of five to fifteen percent downward in the assessed value of the subject property for the fiscal year at issue. The appellants also introduced property record cards for other properties in Kingston, which they claimed were illustrative of the assessors reducing values for easements and rights of way.

Other alleged factors raised by the appellants to support a reduction in assessed value included the following: topography; erosion; no direct beach access; a marsh situated directly in front

of the subject property; vehicular traffic; helicopter noise; and commuter rail noise. The appellants further claimed that there were no sales of vacant land in 2015, the year utilized for value adjustments for the fiscal year at issue, and that “[d]espite being constantly told by the Board of Assessors and the Assessor Office that the increases are all due to sales, sales from 2015 do not support the \$30,700 assessed value increase from 2016 to 2017.”

In addition to jurisdictional documents, the assessors presented their case through the subject property’s property record card; photographs of the subject property; an analysis of the appellants’ alleged comparable sale properties that were included with the appellants’ abatement application for fiscal year 2016;¹ and three comparable sale properties. The assessors also introduced a document entitled “Understanding the Land Curve Table and Land Values.”

Based on all the evidence of record, the Board found that the appellants failed to establish that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The “Kingston MA Fiscal Year 2017 Residential Land Guidelines,” in the absence of any context or explanation, provided

¹ The appellants’ fiscal year 2016 appeal was dismissed by the Board in a decision upheld in *Harlow v. Assessors of Kingston*, 93 Mass. App. Ct. 1106 (2018) (decision under Rule 1:28)). Fiscal year 2016 is not before the Board here and these comparables were not entered into the record by the appellants in this appeal. Consequently, the Board did not factor this analysis into making its decision.

no support for a reduction in the assessed value on account of a right of way. As stated in the document: "[A]djustments [for topographical problems such as steep, ledge, easement, etc.] will be based upon the severity of the noted problem and will therefore fluctuate," indicating a fact-based inquiry that was not undertaken by the appellants. Despite the appellants' claim that the Town had not properly reflected the right of way, there was no evidence of any quantifiably negative impact of the right of way on the subject property's value. Moreover, the property record cards for other Kingston properties introduced by the appellants illustrated neither the extent nor the impact of any easements or rights of way on those properties and so their comparability to the subject property was not established.

Similarly, the record did not establish any quantifiable impact of the appellants' claims regarding noise, topography, erosion, and various other alleged factors on the value of the subject property for the fiscal year at issue. Additionally, the appellants' mere claims regarding 2015 sales - specifically the lack of vacant land sales and the failure of 2015 sales to support the assessed value of the subject property - provided no demonstrated justification for a decrease in the assessed value.

Based upon the above and all the evidence of record, the Board found that the appellants failed to meet their burden of establishing that the assessed value of the subject property was

higher than its fair cash value for the fiscal year at issue. Consequently, the Board issued a decision for the appellee.

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)). "[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, as discussed above in the Board's findings, the appellants presented no credible evidence of overvaluation.

Based on the evidence presented, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Board decided this matter for the appellee.

THE APPELLATE TAX BOARD

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

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board