

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

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

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

Docket No. F344142

Promulgated:
October 13, 2023

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 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 2021 ("fiscal year at issue").

Commissioner Elliott heard this appeal and was joined in his decision for the appellants by Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier.

These findings of fact and report are promulgated pursuant to requests by the appellants and appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

John J. Hightower, Esq., for the appellants.

Adam Costa, Esq., 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, 2020, the relevant date of valuation for the fiscal year at issue, the appellants were the assessed owners of a parcel of land located at 24 Sunset Road in Kingston ("subject property"). The subject property is a 0.5-acre waterfront lot previously comprising two lots - 12R Sunset Road and 24 Sunset Road.

For the fiscal year at issue, the assessors valued the subject property at \$644,516 and assessed a tax thereon at the rate of \$16.08 per thousand in the total amount of \$10,451.38, inclusive of a Community Preservation Act ("CPA") surcharge. The appellants timely paid the tax due without incurring interest. On January 29, 2021, the appellants timely filed an abatement application, which was denied by vote of the assessors on April 27, 2021. The appellants timely filed a petition with the Board on July 26, 2021.¹ On the basis of these facts, the Board found that it had jurisdiction to hear and decide this appeal.

¹ The appellants' petition was stamped as received by the Board on August 2, 2021, but the petition was mailed in an envelope postmarked July 26, 2021. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

The appellants offered an opinion of \$500,000 as the fair cash value of the subject property for the fiscal year at issue, and presented their case through documentary evidence and their own testimony. Central to their case were four allegedly comparable sales, all in close proximity to the subject property, as well as a second set of properties comparing special pricing factors of these comparables with the subject property's factor for purposes of the location adjustment. Other alleged factors raised by the appellants to support a reduction in assessed value included the subject property's location in a non-preferred flood zone with yearly flood insurance premiums ranging between \$13,000 and \$17,500; a right of way allegedly used on a regular basis by the owners of a nearby property; vehicular traffic at all hours of day and night; noise from low-level helicopter flight patterns; and noise from the commuter rail.

The appellee presented its case through documentary evidence and the testimony of Assessor Maureen Clarke, through which the appellee attempted to characterize the four allegedly comparable sales offered by the appellants as non-arm's-length sales. The appellee offered a grid of five proximate properties - with lots ranging in size from 0.36 to 0.55 acres - to demonstrate that the subject property was reasonably assessed compared to other properties with the same site designation as the subject property

and reasonably assessed compared to lots whose size was similar to the size of the subject property.

Based upon all the evidence of record, the Board found that the subject property's fair cash value was \$580,000 for the fiscal year at issue, an overvaluation of \$64,516. Despite the appellants' claim that the assessors had not properly accounted for the impact of the right of way, there was no evidence of any quantifiably negative impact of the right of way on the subject property's value. Similarly, the record did not establish any quantifiable impact of the appellants' claims regarding high flood zone insurance, vehicular traffic, helicopter flight patterns, and the commuter rail.

However, the Board found that two of the appellants' proffered sales - 11 Wharf Lane, with a 0.36-acre lot, and 9 Pebble Lane, with a 0.44-acre lot - were listed and offered through MLS, contradicting the assessors' dismissal of the sales as non-market. Further, the Board found that these two properties provided sufficient evidence of comparability to the subject property to justify a reduction in the assessed value of the subject property. Both properties had lot sizes similar to the subject property's lot size of 0.5 acres, and their sales in 2019 demonstrated that both properties were assessed notably in excess of their sale prices - 11 Wharf Lane sold for \$693,800 in 2019 and was assessed at \$813,936 for fiscal year 2021 (\$120,136 more than its sale

price), and 9 Pebble Lane sold for \$500,000 in 2019 and was assessed at \$739,220 for fiscal year 2021 (\$239,220 more than its sale price). Taking an average slightly below the midpoint of the sale range for these two properties, the Board determined that the subject property's fair cash value was \$580,000 for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellants and granted an abatement in the amount of \$1,047.79, inclusive of the CPA surcharge.

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 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 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, as discussed above in the Board's findings, the appellants presented affirmative evidence of overvaluation, specifically two comparable properties with lot sizes in the range of the subject property's lot size and with relatively high assessed values compared to their sale prices. The Board relied upon the sale prices of these two properties in its determination that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue.

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Based on the evidence presented, the Board found and ruled that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue and that its fair cash value was \$580,000. Accordingly, the Board decided this matter for the appellants and granted an abatement in the amount of \$1,047.79, inclusive of the CPA surcharge.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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