

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**MARKO LABUDOVIC &
NATASA VUCETIC**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF BELMONT**

Docket No. F341345

Promulgated:
January 14, 2022

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 Belmont ("appellee" or "assessors") to abate a tax on certain real estate in Belmont, owned by and assessed to Marko Labudovic and Natasa Vucetic ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2020 ("fiscal year at issue").

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

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

Marko Labudovic and Natasa Vucetic, pro se, for the appellants.

Daniel Dargon, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and testimony submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2019, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 4,909-square-foot, improved parcel of land located in the Town of Belmont with an address of 61 Carleton Road ("subject property"). Information relevant to the Board's jurisdiction is summarized in the following chart:

Assessed valuation	Tax amount/ Tax rate	Taxes timely paid?	Abatement application filed	Deemed denial date/ Notice date	Petition filed with Board
\$1,116,000	\$12,443.64 ¹ \$11.00/\$1,000	Yes	01/13/2020	04/13/2020 06/26/2020	08/11/2020 ²

¹ This amount includes the Community Preservation Act ("CPA") surcharge of \$167.64.

² Pursuant to G.L. c. 58A, § 6 and G.L. c. 59, §§ 64 and 65, an abatement application is deemed denied if the assessors fail to act on it within three months unless the taxpayer consents in writing to an extension of time. The appellants' abatement application was deemed denied on April 13, 2020. The assessors mailed the notice of determination more than ten days after the deemed denial of the appellants' abatement application, in violation of G.L. c. 59, § 63. The notice of determination was invalid, and pursuant to G.L. c. 59, § 65C, the Board may extend by an additional two months the three-month deadline for filing an appeal. See *American House, LLC v. Assessors of Greenfield*, Mass. ATB Findings of Fact and Reports 2005-39, 57-8. The appellants thus had until August 15, 2020, to file their petition. While the Board date-stamped the petition as being received on August 19, 2020, the envelope bore a United States Postal Service postmark of August 11, 2020. The Board, therefore, found and ruled that the petition was timely. See G.L. c. 59, § 64 (for purposes of determining jurisdiction, if a petition is received after the due date, the date of mailing is deemed to be the date of delivery).

Based on the foregoing, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a single-family Colonial-style residence built in 1920 and containing 1,985 square feet of living area, which is comprised of seven rooms, including three bedrooms, as well as two full bathrooms and one half bathroom ("subject home"). The subject home also features an enclosed front-entry porch, a twelve-foot by twenty-six-foot patio, and a fireplace. The subject home is equipped with central air conditioning, but the appellants reported that it was not functioning at times relevant to this appeal.

The appellants challenged the subject property's assessment first by contending that the property record card did not adequately account for the many perceived deficiencies with the subject property. They claimed the property record card inaccurately listed the grade of the subject home as "B" and its condition as "above average." They submitted numerous pictures depicting various imperfections with the subject property's interior and exterior caused by outdated materials and the wear and tear consistent with a century-old property.

The appellants next performed a comparable-sales analysis. They submitted a chart listing the parcel size, square foot living area, and sale price of seventeen purportedly comparable properties that had sold during calendar year 2019, within a year

of the relevant valuation and assessment date. They also performed a comparable-assessment analysis, submitting a chart also listing the parcel size, square foot living area, and the assessed values for seven purportedly comparable properties. Based on their research, the appellants contended that the fair cash value of the subject property for the fiscal year at issue was \$700,000.

Upon questioning by Assessor Dargon, Mr. Labudovic admitted that some of his comparable properties, unlike the subject property, were two-family homes. However, Mr. Labudovic pointed out that several of his comparison properties were single-family homes.

The Board agreed with the appellants that the subject home had too many imperfections to support a construction grade of "B" and an "above average" condition rating. The Board further found that the appellants provided several comparable-sale and assessment properties that supported their contention that the subject property was overvalued. Based on the totality of the evidence, and the conclusions drawn from it, the Board found that the subject property had a fair cash value of \$1,020,000 for the fiscal year at issue.

The Board thus issued a decision for the appellants ordering an abatement of \$1,071.85 in tax for the fiscal year at issue.³

³ This amount includes a *pro rata* portion of the CPA surcharge.

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).

A taxpayer has the burden of proving that a 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 [an] 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 instant appeal, the Board found that the appellants presented

sufficient evidence to support their contention that the assessors incorrectly reported the subject property's construction grade and condition on the property record card.

The appellants further offered a comparable-sales analysis and a comparable-assessment analysis. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 394 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (decision under Rule 1:28). Similarly, evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. See G.L. c. 58A, § 12B; **John Alden Sands v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308). "A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties." Appraisal Institute, *THE APPRAISAL OF REAL ESTATE* 351 (15th ed., 2020). While some of the appellants' properties were not comparable to the subject property, several of them were, and the Board found that those

properties supported the appellants' contention that the subject property was overvalued for the fiscal year at issue.

The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 72 (1941). Based on all the evidence, the Board found and ruled that the subject property's fair cash value for the fiscal year at issue was \$1,020,000. Accordingly, the Board issued a decision for the appellants in this appeal and granted an abatement in the amount of \$1,071.85 in tax for the fiscal year at issue.⁴

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

⁴ This amount includes a *pro rata* portion of the CPA surcharge.