

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DONNA LANG

v. BOARD OF ASSESSORS OF THE
TOWN OF MARBLEHEAD

Docket No. F335143

Promulgated:
July 9, 2019

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 Marblehead ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Marblehead, owned by and assessed to Donna Lang ("appellant") under G.L. c. 59, §§ 11 and 38 for fiscal year 2018 ("fiscal year at issue").

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

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

Edward P. Lang for the appellant.¹

Michael A. Tumulty, assistant assessor, for the appellee.

¹ The appellant authorized her husband, Edward P. Lang, to represent her at the hearing of this appeal.

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.

I. Background and Jurisdiction

On January 1, 2017, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of a 0.344-acre parcel of real estate located on the waterfront at 10 Hathaway Road in Marblehead ("subject property"). The subject property is improved with a single-family, contemporary-style residence ("subject residence") containing four bedrooms, three and a half bathrooms, a two-car attached garage, and a deck. For the fiscal year at issue, the assessors valued the subject property at \$1,845,100. They assessed a tax at a rate of \$11.02 per \$1,000 for an assessment of \$20,333. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest.

Pursuant to G.L. c. 59, § 59, the appellant timely filed an abatement application on January 16, 2018. The assessors denied the abatement application on April 4, 2018, and the appellant timely filed a statement under informal procedure with the Board on April 23, 2018. On May 11, 2015, within thirty days of the date of service of the statement under informal procedure, the assessors elected to transfer the appeal from the informal to

the formal procedure pursuant to G.L. c. 58A, § 7A. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

II. The Appellant's Case

The appellant did not dispute the value attributed to the subject residence by the assessors, but claimed that the fair cash value of the subject property's land should be \$906,105. She derived this amount by calculating a per-acre land value for the fiscal year at issue for each of eleven waterfront properties - ranging in acreage from 0.385 acres to 1.534 acres - located along the shoreline where she lives in Marblehead. She then added together the eleven per-acre land values for a total of \$28,974,306,² which she divided by eleven for an average per-acre land value of \$2,634,028. The appellant then multiplied this \$2,634,028 average by the subject property's acreage of 0.344 to determine a land value of \$906,105 for the subject property for the fiscal year at issue. Added to the uncontested value of the subject residence, the appellant contended that the fair cash value of the subject property for the fiscal year at issue should be \$1,266,205.

As support for this reduction in land value, the appellant relied upon the case of ***Assessors of Brookline v. Prudential***

² The Board notes that the appellant's own calculation is incorrect. The total of the eleven properties' land values should be \$28,973,306, which would then yield an average of \$2,633,937 when divided by eleven, not \$2,634,028.

Insurance Co., 310 Mass. 300, 317 (1941), for the proposition that individual components of an assessment are subject to inquiry and revision. Additionally, the appellant relied upon the board's decision in a prior appeal heard under the informal procedure concerning the subject property in which the Board granted an abatement for fiscal year 2014 in the amount of \$4,235.27, based upon a reduction of the assessed value of the subject property from \$1,796,400 down to \$1,414,500.³ The appellant also asserted that conditions on and surrounding her property - such as the irregular shape of the land, a steep land slope, a public right of way, loitering beachgoers, and various contractor and delivery vehicles using her driveway to turn around - warranted a reduction in land value.

³ The Board took judicial notice of this prior decision. The appellant's petition for the fiscal year at issue claimed that the fair cash value of the subject property should be \$1,414,500, corresponding to the Board's determination in the fiscal year 2014 appeal. However, at trial she claimed that the fair cash value for the fiscal year at issue should be even lower at \$1,266,205. She also claimed that she was entitled to an abatement of \$6,506, which she calculated by taking the 32 percent difference between the assessed value of \$1,845,100 and the requested fair cash value of \$1,266,205 and merely extrapolating that 32 percent difference to the original tax amount of \$20,333. Applying the tax rate of \$11.02 per \$1,000 to the requested fair cash value of \$1,266,205 would result in an abatement of \$6,379.42, not \$6,506.

III. The Assessors' Case

The assessors presented a series of photographs of the subject property and surrounding views, as well as a comparable analysis of seven Marblehead property sales that took place during 2016 to 2018, making adjustments for factors such as location, number of bathrooms, living area, air conditioning, garages, and decks/patios. The adjusted sale prices of these purportedly comparable properties ranged from \$1,828,000 to \$2,604,000. The assessors explained that not all waterfront property is considered equal, and that the subject property is located in the second lowest waterfront neighborhood in terms of value. The assessors emphasized that the appellant's methodology of averaging eleven land values failed to take into account any adjustment for economies of scale, *i.e.*, typically a larger lot size commands a lower price per square foot, and that though for statistical purposes land and buildings may be valued separately, the question is whether the overall valuation is excessive.

The assessors pointed out that the assessment for the fiscal year at issue included a 10 percent reduction for the right of way referenced by the appellant, even though the right of way is not located on the subject property and the appellant admittedly built the very stairs on the right of way that gave water access to the loitering beachgoers she asserted as a

reason for the requested reduction in land value. The assessors testified that "[w]e did give a consideration because we said maybe there is more traffic there than the average person that doesn't have a right of way," but "to hear [the appellant] state that it's a problem after putting in the steps [] is a little bit contradictory it seems."

Additionally, the assessors challenged the appellant's claim that traffic in the area warranted the requested reduction in land value, noting the lack of evidence "suggesting that there's a full on fiesta going on every Friday or Saturday night." The assessors also refuted the appellant's contention that the irregular lot shape of the subject property warranted a reduction in land value, underscoring "the irregular shape and nature of Marblehead in general" and that "it adds to the unique quality and characteristics of the community."

IV. The Board's Findings and Conclusion

Based on the record in its entirety, the Board found that the appellant's methodology of averaging the land values of eleven properties was inadequate to establish that the assessed value of the subject property exceeded its fair cash value. Apart from being located on the same shoreline, there was no evidence that these eleven properties were comparable to the subject property. The appellant neglected to account for any fundamental differences between the eleven selected properties

and the subject property, as well as for economies of scale, as noted by the assessors. In general, a larger lot results in a lower value per square foot. Here, the acreages of the eleven selected properties, ranging from 0.385 acres to 1.534 acres, were all higher than the subject property at 0.344 acres, so the appellant's methodology of applying the average land value of these larger properties to the acreage of the subject property created an artificially reduced land value. The appellant's methodology also neglected to account for the differences in sizes among the eleven properties themselves, which merely compounded the disparity and inadequacy of this methodology.

The appellant presented no evidence that the subject property's land suffered a decrease in value from alleged traffic and loitering beachgoers. Nor did she provide evidence as to how and why an irregularly shaped or sloping lot warranted a decrease in the subject property's land value. Without proof of a proximate cause and effect, the Board had no evidentiary basis to make a finding that the appellant's land value warranted a reduction. Even if she did provide proof, there was no logical correlation as to how the appellant's methodology of averaging eleven land values rectified the alleged deficiencies. Any of the eleven properties selected by the appellant located along the shoreline could be subjected to traffic, loitering

beachgoers, and varying shapes and slopes to an even greater degree than that alleged by the appellant.

Further, though case law relied upon by the appellant states that component parts of an assessment are open to inquiry, case law also stresses that the ultimate question is whether the overall assessment is excessive, not whether a single component is excessive. The appellant's singular focus on the subject property's land value failed to address and substantiate why the overall assessment was excessive. The assessors already factored into the assessment for the fiscal year at issue a 10 percent reduction for the right of way, even though the right of way was not located on the subject property and the appellant was complicit in any alleged loitering by adding steps to the right of way.

The Board gave no weight to the appellant's reliance on the Board's fiscal year 2014 decision regarding the subject property. The fiscal year 2014 decision was based on the record presented in that appeal. The appellant presented no evidence in the present appeal that the state of the subject property or market conditions were the same in fiscal year 2014 as they were in the fiscal year at issue. Moreover, there was no evidence that the value of waterfront property in Marblehead decreased in value between fiscal years 2014 and 2018 as the appellant maintained.

Conversely, the Board found that the assessors presented a careful sales analysis of comparable and relevant Marblehead properties whose adjusted sale prices were either slightly below or in excess of the assessed value of the subject property for the fiscal year at issue.

Accordingly, based upon the record in its entirety, the Board found that the appellant failed to meet her burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue and issued a decision for the appellee.

OPINION

The 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 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 the 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 taxpayer[] sustain[s] the burden of proving 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)). Here, the appellant failed to present any reliable or credible proof of overvaluation. The eleven properties selected by the appellant for their land values were not demonstrably comparable merely by their location on the same shoreline in Marblehead. See **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972) ("[E]vidence of assessments imposed on other property claimed to be comparable to the subject property is largely a matter of discretion of the Board."); **Frei v. Assessors of Holland**, Mass. ATB Findings of Fact and Reports 2014-765, 772 ("The properties used in the analysis must be comparable to the subject property in order to be probative of fair cash value.").

Further, the appellant did not attempt to make adjustments for any fundamental differences between the eleven selected properties and the subject property, as well as for economies of scale. *Lewis v. Assessors of Lowell*, Mass. ATB Findings of Fact and Reports 2015-182, 187 (“[P]er-square-foot sale prices typically decline with increases in living areas.”); *Boquist v. Assessors of Lincoln*, Mass. ATB Findings of Fact and Reports 2014-704, 715 (“[T]he appellant failed to take into consideration the well-established principle of diminishing returns with increases in unit size. The subject property’s prime lot was significantly smaller than those of his comparison properties, and it was therefore logical that it would be valued at a higher value per square foot.”); Appraisal Institute, *The Appraisal of Real Estate* 198 (14th ed., 2013) (“Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.”). The acreages of the eleven selected properties were all higher than the subject property, so the appellant’s methodology of applying the average of these properties’ land values to the acreage of the subject property was distorted and ineffectual at proving that the subject property’s land value was too high. The appellant’s claims regarding an irregularly shaped lot, traffic, and loitering beachgoers were also unpersuasive and unsubstantiated, establishing no proximate cause and effect on the appellant’s

land value and no correlation to the appellant's suggested methodology to rectify the land value.

Of critical significance, the appellant's sole focus on the land value - an analysis that was flawed and deficient in and of itself - failed to account for how the overall assessment was allegedly too high. The case of **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 316-17 (1941), relied upon by the appellant for the proposition that individual components of an assessment are subject to inquiry and revision, stresses that "[t]he tax on a parcel of land and the building thereon is one tax" and the ultimate conclusion is whether "that single assessment is excessive." See also **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). "[A] taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued" but rather that the assessment including both components is excessive. **Corrado v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2010-825, 832. Here, the appellant failed not only to show that the land value was overvalued, but also how that land value impacted the overall assessment. **Boquist**, Mass. ATB Findings of Fact and Reports at 2014-719 ("Even assuming arguendo that the Board concluded that the subject's land was overvalued, which it did not, that conclusion alone would not have entitled the appellant to an abatement, as he failed to

demonstrate that the assessed value of the subject property as a whole exceeded its fair cash value."); *Corrado*, Mass. ATB Findings of Fact and Reports at 2010-832-833 ("[T]he Board found and ruled that the [taxpayers'] land-valuation analysis failed to account for any other components of the total subject assessment in comparison with the comparables' total assessments and therefore was insufficient to show that the overall assessment of the subject property exceeded its fair cash value.").

The Board also rejected the appellant's reliance on the Board's fiscal year 2014 decision regarding the subject property. While the provisions of G.L. c. 58A, § 12A transfer the burden of proof to the assessors if the assessed value for the next two fiscal years is greater than the fair cash value determined by a decision of the Board, the fiscal year at issue in this appeal - fiscal year 2018 - is beyond the two-year period provided in § 12A. Accordingly, the burden of proof remained with the appellant. The record presented in the fiscal year 2014 appeal was not before the Board in the present appeal and the appellant presented no credible or persuasive evidence that the fair cash value of the subject property was less than the assessed value for the fiscal year at issue.

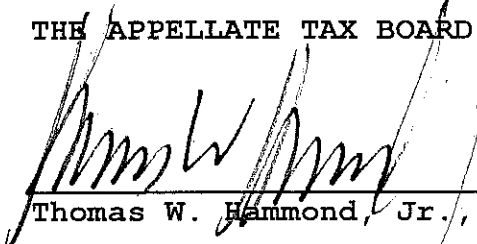
In contrast, the assessors presented a credible and useful sales analysis of seven comparable Marblehead properties with

appropriate adjustments, noting that the subject property is located in the second lowest of seven waterfront neighborhoods in terms of value. The assessors even provided a 10 percent reduction for a right of way not located on the subject property and on which the appellant admittedly built the very stairs that gave water access to the loitering beachgoers she asserted as a reason for the requested reduction in land value. The Board found that the assessors' analysis supported the assessed value of the subject property. See *Cummington School of the Arts, Inc. v. Assessors of Cummington*, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the board.").

Accordingly, based upon the record in its entirety, the Board found and ruled that the appellant failed to establish that the fair cash value of the subject property was less than the assessed value for the fiscal year at issue and issued a decision for the appellee in this appeal.

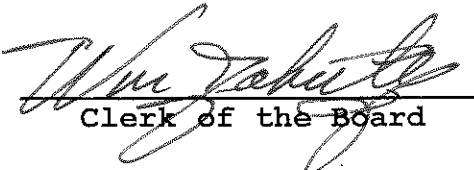
THE APPELLATE TAX BOARD

By:


Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:


Clerk of the Board