

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DEAN AND JUDITH MARCUS

v. BOARD OF ASSESSORS OF THE
CITY OF WORCESTER

Docket No. F334479

Promulgated:
February 28, 2020

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 City of Worcester ("assessors" or "appellee") to abate a tax on certain real estate located in the City of Worcester, owned by and assessed to Dean and Judith Marcus ("appellants") under G.L. c. 59, §§ 11 and 38 for fiscal year 2017 ("fiscal year at issue").

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

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

Dean and Judith Marcus, pro se, for the appellants.

William Ford, 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.

I. Background and Jurisdiction

On January 1, 2016, the relevant date of valuation and assessment for the fiscal year at issue, the appellants were the assessed owners of commercial/office property with 74,149 square feet of gross building area¹ located at 22 Front Street in Worcester ("subject property"). The subject property comprised a two-story building on Front Street and a three-story building on Mechanic Street. For the fiscal year at issue, the assessors valued the subject property at \$2,414,400. They assessed a tax at a rate of \$32.93 per \$1,000 for an assessment of \$79,506.19. In accordance with G.L. c. 59, § 57C, the appellants timely paid the tax due without incurring interest.

Pursuant to G.L. c. 59, § 59, the appellants timely filed an abatement application on January 24, 2017. The assessors denied the abatement application on April 24, 2017, and the

¹ Although the appellants claimed that the assessors' square footage was approximately 20,000 square feet more than it should be, the appellants' claim was not supported by the evidence of record. Rather, the documentation entered into the record by the appellants, including the property record card and a document from the Worcester Executive Office of Economic Development/Business and Community Division, reflected 74,149 square feet of gross building area.

appellants timely filed a Statement Under Informal Procedure with the Board on July 6, 2017. On July 24, 2017, 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.

Prior to this appeal, the appellants successfully appealed the subject property's fiscal year 2016 assessment in Appellate Tax Board Docket No. X307396. In that appeal, the Board granted an abatement and determined the subject property's fair cash value to be \$1,415,000.

Pursuant to G.L. c. 58A, § 12A, because the increased assessment in this appeal involves one of the "next two fiscal years after a fiscal year for which the Board has determined the fair cash value" of the subject property, the burden was on the assessors to justify the approximately \$1,000,000 increase over the Board's fiscal year 2016 value determination.

II. The Appellants' Case

The appellants' testimony and documentation highlighted deficiencies in the subject property. They testified that the subject property itself has no parking facility and lacks access to public transit, with no bus stop nearby. All tenants of the subject property are tenants at will, and the appellants have

initiated legal proceedings against a number of tenants because of unpaid rent, as evidenced by court judgments entered into the record. The appellants pay all utilities on the subject property, and tax returns in the record show that the subject property operated at a loss for calendar years 2015, 2016, and 2017.

The appellants testified to deficiencies within the subject property, such as the lack of side windows, obsolete heating and cooling systems, and an impractical freight elevator located in the rear of the subject property. The appellants also introduced evidence of sales of properties in the vicinity of the subject property, such as a property at 44 Front Street that sold for \$1,300,000 in 2016. However, the appellants did not make any adjustments to these alleged comparable properties.

III. The Assessors' Case

The assessors predominantly contended that increased investment activity and increased rents in the area, as well as the subject property's location directly across from the city hall, supported the assessment for the fiscal year at issue.

IV. The Board's Findings and Conclusion

Based on the record in its entirety, the Board found that the assessors failed to justify the increase over the Board's fiscal year 2016 value determination. Even if the vicinity of the subject property experienced a spike in investment activity

and increased rents, the value of the subject property itself - as demonstrated by the appellants' testimony and evidence - was not shown to have benefitted. The appellants established that they had difficulty with collecting rents from a number of the subject property's tenants and illustrated adverse internal and external conditions impacting the subject property, from lack of parking and public transit to unfavorable interior conditions.

In making its determination, the Board gave no weight to the alleged comparable properties introduced by the appellants since no adjustments were made to account for any differences between the subject property and the alleged comparable properties.

Based upon the record in its entirety, the Board found and ruled that the assessors failed to meet their burden under G.L. c. 58A, § 12A to justify an increase over the Board's determination of fair cash value for fiscal year 2016. Accordingly, the Board found and ruled that the fair cash value of the subject property was \$1,415,000 for the fiscal year at issue and granted the appellants an abatement in the amount of \$32,910.24.

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).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (citing **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The assessment is presumed valid unless the taxpayer proves otherwise. **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245). If, however, the assessment exceeds the Board's prior determination of the subject property's fair cash value for either of the two immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A, "the burden shall be upon the [assessors] to prove that the assessed value was warranted." G.L. c. 58A, § 12A. Accordingly, because the Board's fiscal year 2016 determination of value was less than the assessed value of the subject property for the fiscal year at issue, the Board ruled that the burden of going forward to justify the increase in the subject property's assessment was on the assessors. See generally **Beal v. Assessors of Boston**, 389 Mass. 648 (1983).

In the present matter, the Board found the assessors' references to increased investment activity and rents in the vicinity of the subject property did not provide credible or persuasive evidence of an increased value in the subject property. The assessors offered no credible substantiation for their position, particularly given the magnitude of the increase - approximately \$1,000,000 - in just one year and the inherent deficiencies in the subject property. Thus the Board ruled that the assessors did not meet their burden of justifying the increase in the subject property's assessment.

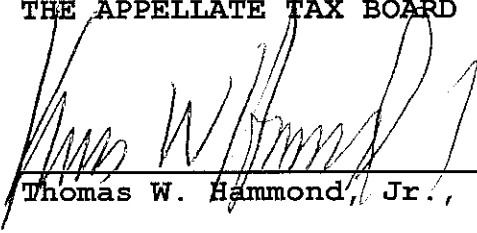
The Board found the appellants' testimony and evidence contradicted any notion that the subject property benefitted from increased investments and rents in the area, as demonstrated by various court judgments for unpaid rents and the subject property operating at a loss for calendar years 2015, 2016, and 2017. Additionally, the subject property lacked parking and public transit options, and suffered from unfavorable interior conditions. The Board, however, gave no weight to the alleged comparable properties introduced by the appellants since no adjustments were made to account for any differences between the subject property and the alleged comparable properties. See **Smith v. Assessors of North Reading**, Mass. ATB Findings of Fact and Reports 2010-836, 839 ("The

appellant provided no adjustments to compensate for differences between his comparables and the subject property.").

Based upon the record in its entirety, the Board found and ruled that the assessors failed to meet their burden under G.L. c. 58A, § 12A to justify an increase over the Board's determination of fair cash value for fiscal year 2016. Accordingly, the Board found and ruled that the fair cash value of the subject property was \$1,415,000 for the fiscal year at issue and granted the appellants an abatement in the amount of \$32,910.24.

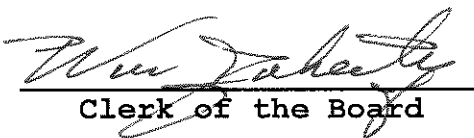
THE APPELLATE TAX BOARD

By:


Thomas W. Hammond, Jr., Chairman

A true copy,

Attest:


Clerk of the Board