COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# MATTHEW & KAREN FOYE v.    BOARD OF ASSESSORS OF

#     THE TOWN OF PLYMPTON

Docket No. F329417  Promulgated:

 December 18, 2017

 This is an appeal 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 Plympton (“appellee” or “assessors”), to abate taxes on certain real estate located in Plympton owned by and assessed to the appellants, Matthew and Karen Foye (“appellants”), under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

 Chairman Hammond (“Presiding Commissioner”) heard this appeal and issued a single-member decision for the appellants in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20. 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.

 *Matthew and Karen Foye, pro se*, for the appellants.

 *Deb Stuart*, 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 Presiding Commissioner made the following findings of fact.

On January 1, 2015, the appellants were the assessed owners of a property located at 59 Cedar Street in Plympton (“subject property”).[[1]](#footnote-1) For fiscal year 2016, the assessors valued the subject property at $416,600 and assessed a tax thereon, at a rate of $17.66 per $1,000, in the total amount of $7,441.04.[[2]](#footnote-2)  Plympton’s Collector of Taxes mailed the fiscal year 2016 tax bill on September 25, 2015. In accordance with G.L. c. 59, § 57, the appellants paid the tax due without incurring interest, and in accordance with G.L. c. 59, § 59, the appellants timely filed an application for abatement on October 19, 2015. The assessors denied the abatement application on January 19, 2016, and on February 25, 2016, the appellants seasonably filed an appeal under the informal procedure with the Appellate Tax Board (“Board”). Subsequently, on April 13, 2016, within 30 days of the date of service of the informal petition, the assessors elected to transfer the appeal to the Board's formal docket. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

 The subject property is improved with a single-family, 1.25-story, Cape Cod-style residence with clapboard siding, vinyl shutters and a gable roof (“subject home”). According to the property record card maintained by the appellee, the subject home contains 2,667 square feet of finished living area and is comprised of 7 rooms, including 4 bedrooms, as well as 2 full bathrooms, 1 half bathroom with laundry area, and an unfinished basement. The subject home includes a 2-car heated garage with an unheated storage area above and a carport attached to the rear of the garage. Other features include 2 fireplaces, a 160-square-foot open porch, a 24-square-foot deck, and a storage shed.

The subject home’s interior features hardwood flooring on the first floor and carpeting on the second floor, and the bathrooms and kitchen are rated as average style and quality, with finishes that include basic tile flooring, Formica counters, and standard cabinets.

The subject property has been the topic of prior litigation before the Board. For both fiscal years 2014 and 2015, the Board found and ruled that the subject property’s fair cash value was lower than the value assessed by the appellee and thus granted an abatement. For fiscal year 2015, the year preceding the fiscal year at issue, the Board found that the subject property’s fair cash value was $365,000. Pursuant to G.L. c. 58A, § 12A, because 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, and because the assessed value of the subject property for fiscal year 2016 is greater than the value determined by the Board for fiscal year 2015, the assessors bear the burden of proving that the increase in value is warranted. G.L. c. 58A, § 12A.

In support of the increased assessment, Deb Stuart, assessor for Plympton, presented three sales of purportedly comparable properties in Plympton. Ms. Stuart’s analysis is summarized below:

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **Comp. 1** | **Adj.** | **Comp. 2** | **Adj.** | **Comp. 3** | **Adj.** |
| **Address** | 16 Granville Baker |  | 32 Grove St. |  | 49 Ring Road |  |
| **Date****Price** | 09/23/13$485,000 |  | 09/18/14$460,000 |  | 09/08/14$405,000 |  |
| **Assessment** | $467,800 |  | $414,900 |  | $377,100 |  |
| **Lot size** | 8.31 acre | -$ 5000 | 3.6 acre |  | 3.0 acre |  |
| **Location** | Cul de sac | -$ 5000 | Pond view | -$60000 | Retreat |  |
| **Style****Grade****Avg year** | CapeAve/good1995/avg |  | GambrelAve/good1979/avg |  $10000 | CapeAve/good1978/avg |  $10000 |
| **Rooms/bed/bath** | 10/4/3 | -$ 2500 | 8/3/1.5 |  $10000 | 9/5/3 |  $ 2500 |
| **GLA** | 3225 | -$19500 | 2201 |  $16300 | 2504 |  $ 5700 |
| **Bsmt/Finish** | Full/part fin |  $10000 | Full/part fin |  $ 5000 | Full/unfin |  |
| **Heat****cool** | FHW/GasNone |  $10000 | FHA oilCentral |  | FHA oilNone |  $10000 |
| **Garage** | 3-car att 936 sf |  $ 5000 | 2-car att 480 sf |  $ 7500 |  |  $20000 |
| **Fireplace** | 2 |  | 1 |  $ 2500 | 1 |  $ 2500 |
| **Amenities** | Pool, deck, open porch, cabana | -$15600 | Pool, deck | -$ 4000 | Deck, encl porch, barn | -$11000 |
| **Total adj.** |  | -$22,600 |  | -$12,700 |  |  $39,700 |
| **Adj. value** |  | **$462,400** |  | **$447,300** |  | **$444,700** |

The assessors explained their market adjustments in a table as follows:

GLA @ $35 sf 2 car heat att. gar. @ $15,000

Bedroom @$5,000 2 car cpt. @ $5,000

Bath @ $5,000 Fireplace @ $2,500

Half bath @ $2,500 Shed w/ elect. @ $1,500

Fin. Bsmt @ $10,000 Excess AC @ $5,000

After adjustments, the appellee’s purportedly comparable properties yielded sale prices ranging from $444,700 to $462,400. The subject assessment at $416,600 is below that range, which, the appellee claims, justifies the assessment.

The appellants presented their overvaluation case by first contending that the appellee made errors on the property record card with respect to the subject home’s square footage of living area and its classification. The appellants submitted a copy of a classification brochure, complete with descriptions and example pictures, which they explained was given to them by the appellee. The property record card lists the subject property at Grade 5 (“average +20”), but the appellants contended that, according to the brochure, it should be listed at a Grade 4 (“average +10”), because the subject home lacks refined design elements and attractive hardware and fixtures.

The appellants further testified and submitted copies of photographs to support purported square-footage errors on the property record card. They first contended that, while listed on the property record card as a finished half-story, 507-square-foot addition, the addition is actually a quarter-story, 340-square-foot addition. They next argued that the finished upper story, listed as a full story with 400 square feet of living area, is actually a half-story with 200 square feet of living area. Finally, they contended that what the appellee classified as a 15-square-foot finished utility area was in actuality only a 6-square-foot, rough-made bulkhead.

The appellants also presented a comparable-sales analysis and supporting documentation -- including supporting property record cards, pictures and Multiple List Service (“MLS”) listings -- featuring 10 purportedly comparable properties in Plympton that sold between 2013 and 2015. However, the appellants made no adjustments to their purportedly comparable sale properties to yield a meaningful comparison to the subject property. On the basis of their evidence, the appellants contended that the fair market value of the subject property was $345,000 for the fiscal year at issue.

On the basis of the evidence of record, the Presiding Commissioner made the following additional findings of fact. First, the Presiding Commissioner found that the appellee incorrectly categorized the back stairs as a deck and the rough-made bulkhead area as a finished utility area. The appellee also incorrectly classified the subject home as having refined design elements and other attractive, higher-end features.

The Presiding Commissioner also found that the appellee’s purportedly comparable properties were not sufficiently comparable to the subject property to yield a meaningful comparison. For example, the first purportedly comparable property, 16 Granville Baker, was an 8.31-acre property, as compared to the subject property’s 1.31 acres, and its gross living area was 3,225 square feet, as compared to the subject property’s 2,667 square feet. Likewise, the appellee’s second purportedly comparable property, 32 Grove Street, was a 3.6-acre property, far larger than the subject property. The Presiding Commissioner further found that the appellee’s purportedly comparable properties were not comparable in terms of the structure and condition of the homes. The subject property had rough construction and additions and large areas of unusable or inaccessible space. Moreover, the subject property lacked landscaping.

On the basis of the evidence presented, the Presiding Commissioner found and ruled that the appellee did not meet its burden of justifying a higher fair cash value than the Board’s determination of fair cash value for the subject property for the fiscal year immediately preceding the fiscal year at issue.

However, the appellants contended that the fair cash value of the subject property for the fiscal year at issue should be less than the Board’s determination for the prior fiscal year. While the appellants presented property record cards and MLS listings and pictures of purportedly comparable properties that sold in their community, they did not make any adjustments to those sale prices to make a meaningful comparison to the subject property. The Presiding Commissioner thus found that the appellants failed to offer any persuasive, credible evidence that the fair cash value of the subject property for the fiscal year at issue was less than the value found by the Board for fiscal year 2015.

Therefore, the Presiding Commissioner found and ruled that $365,000, the cash value for the subject property as determined by the Board for fiscal year 2015, was the fair cash value for the subject property for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued a decision for the appellants in the instant appeal and granted an abatement of $924.92.[[3]](#footnote-3)

**OPINION**

Assessors are required to assess all real property at its full and fair cash value. G.L. c. 59, § 28; ***Coomey v. Assessors of Sandwich,*** 367 Mass. 836, 837 (1975). Generally, the assessors’ valuation is presumed valid unless the taxpayers sustain their burden of proving otherwise. ***Schlaiker v. Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974). However, G.L. c. 58A, § 12A (“§ 12A”) provides in pertinent part that:

[i]f the owner of a parcel of real estate files an appeal of the assessed value of said parcel with the board for either of the next two fiscal years after a fiscal year for which the board has determined the fair cash value of said parcel and if the assessed value is greater than the fair cash value as determined by the board, the burden shall be upon the appellee to prove that the assessed value was warranted.

In the present appeal, the assessment at issue falls within the 2-year statutory period of § 12A. Therefore, the assessors bear the burden of proving that the increase in the assessment from fiscal year 2015 was warranted. *See, e.g.,* [***Beal v. Assessors of Boston***, 389 Mass. 648 (1983);](http://www.lexis.com/research/buttonTFLink?_m=49a8874083765d19b22ffd9ff2a61867&_xfercite=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b2014%20Mass.%20Tax%20LEXIS%2029%5d%5d%3e%3c%2fcite%3e&_butType=3&_butStat=2&_butNum=25&_butInline=1&_butinfo=%3ccite%20cc%3d%22USA%22%3e%3c%21%5bCDATA%5b389%20Mass.%20648%5d%5d%3e%3c%2fcite%3e&_fmtstr=FULL&docnum=2&_startdoc=1&wchp=dGLbVzt-zSkAW&_md5=1a8c90ab2fc798b0501fc6e62988a437) ***Finlayson v. Assessors of Billerica,*** Mass. ATB Findings of Fact and Reports 2007-531, 538; *see also****Cressey Dockham & Co., Inc. v. Assessors of Andover***, Mass. ATB Findings of Fact and Reports 1989-72, 86-87 ("Once a prior determination of the Board of the fair cash value of the same property [for one of the prior two fiscal years] has been placed in evidence, [] the statute requires [that the assessors] produce evidence to satisfy the Board that the increased valuation was warranted.").

Regardless of the burden imposed by § 12A, the burden of persuasion remains with an appellant who claims that a property's fair cash value is less than the Board's prior determination. *See****Hiser v. Assessors of Windsor***, Mass. ATB Findings of Fact and Reports 2014-487, 496 *(*citing***Johnson v. Assessors of Lunenburg***, Mass. ATB Findings of Fact and Reports 1992-1).

In the present appeal, the assessors offered a comparable-sales analysis relying on 3 sales from Plympton. However, the assessors failed to show that the properties were sufficiently comparable to the subject property to yield a meaningful comparison to the subject property. *See, e.g*., ***Famiglia, LLC v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2008-1368, 1385. Thus, the assessors failed to prove that the increase in the assessment from fiscal year 2015 was warranted.

Once the assessors failed to meet their burden under § 12A, the appellants could have rested and relied on the Board’s fiscal year 2015 determination of value. The appellants, however, argued that the assessed value of the subject property for fiscal year 2016 was $20,000 less than the value found by the Board for the prior fiscal year and therefore bore the burden of persuasion, as discussed above.

To support a claim of overvaluation, 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984)(quoting***Conlon v. Assessors of Holliston,*** 389 Mass. 854, 855 (1983)).

Evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. G.L. c. 58A, § 12B. Properties whose assessed values are relied upon must be sufficiently comparable to the subject property in order to be probative of fair cash value. *See* ***Assessors of Lynnfield v. New England Oyster House, Inc.***, 362 Mass. 696, 703 (1972). Further, purportedly comparable properties must be adjusted for differences with the subject property. *See* ***Graham v. Assessors of West Tisbury,*** Mass. ATB Findings of Fact and Reports 2007-321, 402, *aff'd,* 73 Mass. App. Ct. 1107 (2008). “[W]ithout appropriate adjustments . . . the assessed values of [comparable] properties [do] not provide reliable indicator[s] of the subject’s fair cash value.” ***Lupacchino v. Assessors of Southborough,*** Mass. ATB Findings of Fact and Reports 2008-1253, 1269.

In the instant appeal, the appellants did not present sufficient evidence to demonstrate that the errors in the assessors’ characterization of the subject home would alter the Board’s determination of value for fiscal year 2015. Further, the appellants failed to make any adjustments to account for differences between the subject property and their purportedly comparable properties to account for differences in gross living area, room count, bedrooms, bathrooms and other features that affect a property’s market price. Absent such adjustments, no meaningful comparison of this property with the subject property could be made and, therefore, the appellants’ analysis lacked persuasive value.

Accordingly, the Presiding Commissioner found and ruled that the fair cash value of the subject property for the fiscal year at issue was $365,000 and therefore granted an abatement in the amount of $924.92, inclusive of CPA surcharges.

 **THE** **APPELLATE TAX BOARD**

**By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_    Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_**

**Clerk of the Board**

1. A portion of the subject property is located in the neighboring town of Middleborough. [↑](#footnote-ref-1)
2. This amount includes a Community Preservation Act (“CPA”) surcharge in the amount of $83.87. [↑](#footnote-ref-2)
3. This amount includes an appropriate portion of the CPA surcharge. [↑](#footnote-ref-3)