

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WILLIAM M. AND ANITA MILKA v. **BOARD OF ASSESSORS OF THE
TOWN OF ROCHESTER**

Docket No. F336311

Promulgated:
March 3, 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 Rochester ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Rochester owned by and assessed to William M. and Anita Milka ("appellants") for fiscal year 2018 ("fiscal year at issue").

Commissioner Good heard this appeal and was joined in her decision for the appellee by former Chairman Hammond and Commissioners Elliott, Metzer, and DeFrancisco.

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

Marc R. Deshaies, Esq. for the appellants.

Ellen M. Hutchinson, Esq., and *Chuck Shea, 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.

On January 1, 2017, the relevant date of valuation for the fiscal year at issue, the appellants were the assessed owners of real property located at 243 New Bedford Road in Rochester ("subject property"). The subject property consists of a 37.14-acre parcel of land improved with commercial property for a garage/excavation business, including various outbuildings and a solar array.

The assessors valued the subject property at \$1,278,100 for the fiscal year at issue and assessed a tax thereon at the rate of \$14.11 per \$1,000 in the amount of \$18,033.98. The appellants paid the tax due without incurring interest. The appellants filed an abatement application with the assessors on January 12, 2018, which was deemed denied on April 12, 2018. The assessors reconsidered the deemed denial and granted the appellants an abatement of \$536,100 on May 15, 2018, based upon the tax exemption of the solar array pursuant to G.L. c. 59, § 5, Clause 45th. The appellants sought further abatement of the \$742,000 remaining assessment by filing a petition with the Board on July 10, 2018. Based upon this information, the Board found that it had jurisdiction to hear and decide this appeal.

In addition to testimony and the property record card for the subject property, the appellants relied upon a brief narrative, a map and photo of the subject property, and the property record card for a nearby purportedly comparable property with a solar array that was valued at \$48,600 ("comparable property"). However, testimony revealed that this comparable property was situated on two parcels and that the parcel corresponding to the property record card entered into evidence and valued at \$48,600 ("first parcel") was not the parcel on which the vast majority of the solar array was located. It was instead located on a parcel ("second parcel") that was subject to a payment in lieu of taxes ("PILOT") agreement¹ with the Town of Rochester. No evidence was offered by the appellants on this second parcel, including any evidence concerning the PILOT agreement. Consequently, the Board had insufficient evidence to even evaluate the relevance of the comparable property. The appellants' remaining evidence and testimony provided no persuasive, reliable evidence of a lower value than that assessed. Based upon the lack of credible and probative evidence and testimony, the Board found that the appellants failed to meet their burden of proving that the assessed value of the subject property exceeded its fair cash value for the

¹ Pilot agreements "help communities recoup lost revenue that is a result of state property tax exemptions," minimizing "the revenue impact on communities hosting recreational areas, solar and wind farms, nonprofit institutions, and properties held by the Commonwealth." mass.gov/info-details/pilots-an-introduction (visited December 30, 2021).

fiscal year at issue. Consequently, the Board issued a decision for the appellee in this appeal.

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 at issue 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)). In the present appeal, the appellants failed to expose flaws in the assessors' method of valuation of the subject property for the fiscal year at issue and they also failed to introduce any credible affirmative evidence of value. The comparable property relied upon by the appellants was situated on two parcels, and the record contained no evidence concerning the parcel on which the vast majority of the comparable property's solar array was located.

Based upon the above and the evidence of record, the Board found and ruled that the appellants failed to meet their burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: /S/ Patricia M. Good

Patricia M. Good, Commissioner

A true copy,

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