

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BEN MING-CHE KUO

v.

**BOARD OF ASSESSORS OF
THE TOWN OF WELLESLEY**

Docket No. F338442

Promulgated:
January 6, 2022

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 Wellesley ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Wellesley owned by and assessed to Ben Ming-Che Kuo ("appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

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

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

Phyllis Tan, pro se, for the appellant.

Donna McCabe, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of 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, 2018, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 39,673-square-foot parcel of real estate located at 15 Lathrop Road in Wellesley improved with a split-level, single-family dwelling with 2,154 square feet of living area ("subject property"). The dwelling, which was built in 1958, contained six rooms, including three bedrooms, two full bathrooms, and two half bathrooms.

For the fiscal year at issue, the assessors valued the subject property at \$1,587,000 - \$1,259,000 for the land and \$328,000 for the dwelling - and assessed a tax thereon, at a rate of \$11.57 per \$1,000, in the total amount of \$18,535.56, which included the town's Community Preservation Act surcharge. The appellant timely filed an abatement application with the assessors on January 30, 2019,¹ which they denied on March 25, 2019. On June 21, 2019, the

¹ The appellant's abatement application was mailed in an envelope postmarked January 30, 2019, which was received by the assessors on February 5, 2019. Where, as here, the assessors receive an abatement application after the due date, the date of postmark is deemed to be the date of filing. See *G.L. c. 59, § 59*. Accordingly, the Board found that the appellant's abatement application was timely filed on January 30, 2019.

appellant seasonably filed a Petition Under Formal Procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant, through the testimony of his wife, Phyllis Tan, argued that the subject property was overvalued for the fiscal year at issue because the land portion of the assessment increased by \$407,000 from the previous fiscal year. The appellant offered into evidence the property record cards for eleven properties also located on Lathrop Road. The appellant focused solely on each property's land value. The lots ranged in size from 20,119 square feet to 58,283 square feet with assessed values that ranged from \$855,000 to \$1,525,000. The majority of the lots were in the 20,000-square-foot range with an average land assessment in excess of \$940,000, or \$42.06 per square foot.

The appellant also presented an appraisal report for the subject property that included four sales that occurred between September 2017 and June 2018 with sale prices ranging from \$760,000 to \$1,155,000. The properties' parcels ranged in size from 24,018 square feet to 48,569 square feet and were located between 0.60 miles and 1.47 miles from the subject property. The appraiser, who did not testify, valued the subject property at \$1,050,000 as of January 1, 2018.

For their part, the assessors offered a comparable-sales analysis that included five parcels of improved land located within one-half mile of the subject property, ranging in size from 19,144 square feet to 27,879 square feet. The properties sold between July 2015 and September 2018 with sale prices that ranged from \$1,000,000 to \$1,535,000. Included in the assessors' comparable-sales analysis was 22 Lathrop Road, a 20,119-square-foot improved parcel located diagonally across from the subject property, that sold on May 9, 2016 for \$1,495,000. According to the property record cards, all of the existing structures on these parcels were demolished subsequent to the sales and larger homes were built.

Based on the evidence presented, the Board found that the appellant failed to meet his burden of proving that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue.

The Board found that the mere increase in the subject property's assessment from the prior fiscal year, in and of itself, was not enough to prove overvaluation. The Board also found that the assessed land values of the eleven properties located on Lathrop Road actually supported the subject property's land assessment of approximately \$32.00 per square foot. The Board further found that the appraisal report submitted by the appellant was of little evidentiary value because the properties relied upon

were located in different neighborhoods from the subject property and the appraiser did not testify.

With respect to the assessors' comparable-sales analysis, the Board found that the cited properties were more comparable to the subject property than those cited by the appellant and supported the overall assessments of the subject property.

Accordingly, the Board issued a decision for the appellee in this appeal.

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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 in a free and open market 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).

The 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[] . . . prov[es] the contrary.'" ***General Electric Co.***, 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. v. Assessors of Lynn***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

A taxpayer "does not conclusively establish a right to an abatement merely by showing that his **land or building is overvalued**. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'" *Hinds v. Assessors of Manchester-by-the-Sea*, Mass. ATB Findings of Fact and Reports 2006-771, 778 (quoting *Assessors of Brookline v. Prudential Insurance Co.*, 310 Mass. 300, 317 (1941)). In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive." *Massachusetts General Hospital v. Belmont*, 238 Mass. 396, 403 (1921); see also *Buckley v. Assessors of Duxbury*, Mass. ATB Findings of Fact and Reports 1990-110, 119; *Jernegan v. Assessors of Duxbury*, Mass. ATB Findings of Fact and Reports 1990-39, 49.

Taking into account the evidence offered by both parties the Board found the mere increase in the subject property's assessment from the prior fiscal year, in and of itself, was not enough to prove overvaluation. The Board also found that the assessed land values of the eleven properties located on Lathrop Road actually supported the subject property's land assessment of approximately \$32.00 per square foot. The Board further found that the assessors'

cited properties were more comparable to the subject property than those cited by the appellant and supported both the overall assessments of the subject property.

Based on the evidence, the Board found and ruled that the appellant failed to meet his burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in the instant appeal.

APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Commissioner

A true copy:

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