

**COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD**

MICHAEL K. & MINDY M. MURPHY

**v. BOARD OF ASSESSORS OF
THE TOWN OF MARBLEHEAD**

Docket No. F347498

Promulgated:
March 7, 2024

This is an appeal originally filed under the Informal Procedure¹ pursuant to G.L. c. 58A, § 7A 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 real estate owned by and assessed to Michael K. and Mindy M. Murphy ("appellants") for fiscal year 2022 ("fiscal year at issue").

Commissioner Bernier heard this appeal. He was joined by Chairman DeFrancisco and Commissioners Good, Elliott, and Metzger in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.²

Michael K. Murphy, Esq., pro se, for the appellants.

Karen Bertolino, Assessor, for the appellee.

¹The assessors timely elected to transfer the proceedings to the formal docket. See G.L. c. 58A, § 7A.

²This citation is to the version of the regulations in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a condominium unit with an address of 10 Bartlett Street, Unit 1, Marblehead ("subject unit"). The subject unit is a townhouse built in 1980 that contains 3,228 square feet of living area comprised of nine rooms, including four bedrooms and three full bathrooms and one half bathroom. It is located one block from the waterfront in a neighborhood consisting almost entirely of single-family homes.

The assessors valued the subject unit at \$814,700 for the fiscal year at issue and assessed a tax thereon, at a rate of \$10.52 per \$1,000, in the total amount of \$8,570.64. In accordance with G.L. c. 59, § 57C, the appellants timely paid the tax due without incurring interest. On January 26, 2022, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which the assessors denied on April 22, 2022. On July 20, 2022, the appellants seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellants presented their case through the testimony of Mr. Murphy, as well as the submission of various valuation documents. The appellants submitted a comparable-assessment analysis of the subject unit and purportedly comparable properties, including seven neighboring single-family homes on Bartlett Street and one home located across the street from the subject unit on Spray Street. Although the appellants presented charts with the history of assessments for each purportedly comparable property on Bartlett Street and Spray Street, the appellants did not present property record cards for those properties, and they offered no adjustments to account for any differences between the subject unit and those properties.

The appellants' analysis also included a comparison of the assessed value of the subject unit to the assessed values of five condominium units located on Intrepid Circle ("Intrepid units"), which are located in a different neighborhood that is significantly further from the waterfront than the subject unit. The appellants provided unofficial property record cards for the Intrepid units as well as charts listing the history of the assessed values of these properties beginning as early as fiscal year 2009. Notably, each of the Intrepid units had a smaller living area of under 3,000 square feet and had fewer rooms and bedrooms, for which the appellants did not offer adjustments.

This appeal was based primarily on the appellants' contention that the subject unit's assessed value for the fiscal year at issue increased at a higher percentage rate over the prior fiscal year than the average rate of increase experienced by the other cited properties for same time period. According to the appellants' calculations, the increase in assessed value of the subject unit for the fiscal year at issue over the prior year was 10.47%, while the average increase in assessed value of six other houses on the same street plus another property located on Spray Street was only 0.66%.³ In addition, the appellants calculated the average increase in assessed value of the Intrepid units as 0.08%. The appellants argued that the increase in the rate of assessment for the subject unit was inexplicably higher than the increases experienced by the purportedly comparable properties.

The appellants also compared the assessed value per square foot of the subject unit to the average assessed value per square foot of the Intrepid units. According to the appellants' calculations, the average assessed value per square foot of the subject unit for the fiscal year at issue was \$252.40 compared to the average assessed value per square foot of the Intrepid units for the fiscal year at issue, which the appellants calculated as \$243.70. The appellants noted that in prior years, the subject

³The appellants, without explanation, excluded from their calculation the 10.36% increase in assessed value of the property located at 12 Bartlett Street.

unit was assessed at a lower value per square foot than the Intrepid units and argued that the fiscal year at issue deviated from prior years in that the subject unit was assessed at a higher value per square foot than the Intrepid units. Based on their contention that the assessed value of the subject unit increased at a higher rate than neighboring properties on Bartlett Street and Spray Street, and citing the assessed values of condominium units in a different neighborhood (the Intrepid units), the appellants applied an increase of 0.09% to the assessed value for fiscal year 2021 and offered their opinion that the fair cash value of the subject unit for the fiscal year at issue was \$738,238.

The assessors, for their part, presented the testimony of Karen Bertolino, Assessor, and submitted jurisdictional documents as well as a valuation report that included a history of abatements that were granted for the subject unit in prior fiscal years. The assessors noted that the abatement for fiscal year 2021 was granted because the condition of the subject unit was incorrectly designated. However, the assessors indicated that the updated condition of the property was reflected in the valuation for the fiscal year at issue, thus no abatement was granted for the fiscal year at issue. The assessors emphasized that the appellants' opinion of value for the subject unit reflected an increase of only \$738 from fiscal year 2021, which the assessors noted was

"improbable" given the appreciation in the real estate market since 2020.

The assessors disputed the appellants' comparison of the subject unit to that of the Intrepid units. The assessors contended that the subject unit's location in a highly desirable neighborhood of primarily single-family homes accounted for its higher valuation and rate of appreciation when compared to the location of the Intrepid units in a condominium development. The assessors presented hypotheticals in which the Intrepid unit valuations were re-calculated using the single-family neighborhood code to illustrate that the same properties, if converted to single-family homes located in a neighborhood similar to the neighborhood of the subject unit, would have significantly higher valuations.

The assessors also presented sales information that compared the assessed value per square foot of the subject unit of \$252.38 for the fiscal year at issue to the median sales price per square foot of recent sales of other Intrepid Circle condominium units. The assessors argued that even without adjusting for location and neighborhood type, the assessed value per square foot of the subject unit was less than that of the Town's median sales price per square foot for the Intrepid Circle condominium properties sold during fiscal years 2021 through 2023.

The Board found and ruled that the appellants' comparison of relative increases in assessments was not probative of the subject

unit's fair cash value for the fiscal year at issue. The Board also found the appellants' comparison of assessed values per square foot of the subject unit to the assessed values per square foot of the Intrepid units to be unreliable without accounting for differences among the properties. The location of the Intrepid units in a condominium development and further removed from the waterfront, as compared to the subject unit's location a block from the waterfront in a neighborhood of single-family homes, called into question the comparability of the subject unit and the Intrepid units. Moreover, the appellants failed to provide adjustments to these properties to account for these key differences between the Intrepid units and the subject unit as well as other factors such as living area, all of which affect fair cash value. Therefore, the Board found and ruled that the appellants' comparable-assessment analysis lacked probative value in determining the fair cash value of the subject unit.

Based on the record in its entirety, the Board found and ruled that the appellants presented insufficient evidence to support a finding that the subject unit was overvalued for the fiscal year at issue. Moreover, the Board found the assessors' evidence to be credible and supportive of the assessed value. Accordingly, the Board issued a decision for the appellee for the fiscal year at issue.

OPINION

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 where both 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 its assessed value. "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 (citing ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the Board found and ruled that the appellants failed to meet their burden of establishing that the subject unit had a lower fair cash value than its assessed value for the fiscal year at issue. The appellants' case was based primarily on what they claimed to be a higher percentage increase in assessment for the fiscal year at issue over the prior fiscal year as compared to the increases experienced by certain other properties on Bartlett Street and on Spray Street. The appellants did not demonstrate that any such increase resulted in a valuation above the subject unit's fair cash value for the fiscal year at issue. "The fact that appellant's assessment may have increased at a percentage greater than the percentage increase in the assessments of other houses is not determinative of the issue. It could be that prior assessments and the institution of revaluation procedures revealed that his former assessment was unduly low. The test is fair cash value or market value." ***Burke et al. v. Assessors of Peru***, Mass. ATB Findings of Fact and Reports 1983-1, 6. Moreover, in calculating the average percent increase in valuation of the properties on Bartlett Street and Spray Street, the appellants excluded a neighboring property that had risen in assessed value at almost the same rate as the subject property, thereby undermining the appellants' calculation and comparison of the average percent increase in assessed values.

Properties used in a comparable-assessment analysis must be comparable to the subject property, meaning that they must share “fundamental similarities” with the subject property, including similar age, location, and size. ***Lattuca v. Robsham***, 442 Mass. 205, 216 (2004). “Once basic comparability is established, it is then necessary to make adjustments for the differences, looking primarily to the relative quality of the properties, to develop a market indicator of value.” ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 470 (1981). The appellants failed to account for any differences, including location, neighborhood type, and size of living area between the purportedly comparable properties and the subject unit. Therefore, the Board found and ruled that the comparable-assessment analysis lacked probative value for determining the subject unit’s fair cash value for the fiscal year at issue. Moreover, the Board found the assessors’ evidence credible and supportive of the assessed value.


[This space intentionally left blank.]

Based on the foregoing, the Board found and ruled that the appellants did not meet their burden of proving that the assessed value of the subject unit was greater than 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/  _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/  _____
Clerk of the Board