

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ILDUS & ARINA NURLAT

v.

BOARD OF ASSESSORS OF  
THE TOWN OF SWAMPSCOTT

Docket No. F332645

Promulgated:  
March 26, 2019

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 Swampscott ("assessors" or "appellee") to abate a tax on real estate located in the Town of Swampscott, owned by Ildus and Arina Nurlat ("appellants"), for fiscal year 2017 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member 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.

*Arina Nurlat, pro se*, for the appellants.

*John Spidel*, 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, 2016, the appellants were the assessed owners of a condominium unit located at 36A Fairview Avenue in Swampscott ("subject property"). Relevant jurisdictional facts are summarized in the following table:

Valuation	Tax rate	Tax amount	Abatement application filed	Abatement application denied by assessors	Petition filed
\$272,100	\$17.45 per \$1,000	\$4,748.15	01/17/2017	04/10/2017	05/10/2017

On the basis of these facts, the Presiding Commissioner found and ruled that the Appellate Tax Board ("Board") had jurisdiction to hear and decide the instant appeal.

The subject property is an approximately thirty-year-old, two-story, wood-frame condominium unit. It is one of four units constructed by the same builder, at the same time and on two adjacent lots. Each of the four units is part of a two-unit, duplex-style condominium building. The subject property contains 1,170 square feet of living area and is comprised of five rooms, including three bedrooms, as well as one full bathroom and one half bathroom.

The appellants contend that the subject property was overvalued. In support of their contention, the appellants

presented evidence of the assessment of 34B Fairview Avenue, one of the four similar condominium units on the same lot. This condominium unit was assessed at \$235,600 for the fiscal year at issue. The appellants did not, however, adjust their comparable assessment for any differences between 34B Fairview and the subject property, particularly condition.

The appellee presented its case through the testimony of John Spidel, assessor. Mr. Spidel admitted to some lack of uniformity among the assessments for these four similar condominium units. He presented a comparable-sales analysis consisting of three condominium units - 36B Fairview Avenue, in the same building as the subject property; 34B Fairview Avenue, the same property offered by the appellants for their comparable-assessment analysis; and 4 Shelton Road, located about a mile away from the subject property. The sales ranged from August 2015 to November 2016. Mr. Spidel adjusted his sales for location, quality of construction, condition, living area, room count, and finished basement. After adjustments, his purportedly comparable properties yielded indicated values ranging from \$269,400 to \$297,500.

The Presiding Commissioner found that 36B and 34B Fairview Avenue were most similar to the subject property, although each was superior to the subject property in quality and condition. The Presiding Commissioner found that Mr. Spidel adequately

adjusted for quality by reducing the comparable properties' sales prices by \$10,000 to arrive at adjusted sale prices of \$281,000 and \$297,500. Although the Presiding Commissioner found that a further adjustment of \$10,000 was warranted to account for the comparable properties' superior condition, their adjusted sale prices still supported the subject property's assessment for the fiscal year at issue.

Accordingly, the Presiding Commissioner 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 at 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 appellants have the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner[s] to make out [their] 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 taxpayers . . . prov[e] the contrary.'" *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (quoting *Schlaiker*, 365 Mass. at 245).

In appeals before this Board, taxpayers "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 instant appeal, the appellants offered no evidence of comparable sales, relying instead on the assessed value of a single property. Moreover, the appellants provided no adjustments to compensate for differences between their comparable-assessment property and the subject property. See, e.g., *Lattuca v. Robsham*, 442 Mass. 205, 216 (2004); *5's Enuf v. Assessors of Monterey*, Mass. ATB Findings of Fact and Reports 2018-49, 56 (finding that "without appropriate adjustments . . . the assessed values of [comparable] properties [do] not provide reliable indicator[s] of the subject's fair cash value").

The Board has emphasized that, if available, "[s]ales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue."


*Giard v. Assessors of Colrain*, Mass. ATB Findings of Fact and Reports 2009-115, 123 (citing *McCabe v. Chelsea*, 265 Mass. 494, 496 (1929)). In defense of the subject property's assessment, the appellee presented evidence of two condominium sales from the same lot as the subject property. Unlike the appellants, the appellee's witness provided adjustments for differences between these properties and the subject property that affect fair cash value. The Presiding Commissioner found the assessors' adjustments to be credible, and once adjusted, these sales supported the subject property's assessment for the fiscal year at issue.

On the basis of the evidence, particularly the two adjusted sales prices of the neighboring, similar condominium units, the Presiding Commissioner found and ruled that the appellants failed to prove that the subject property's assessment exceeded its fair cash value. Accordingly, the Presiding Commissioner issued a decision for the appellee.

THE APPELLATE TAX BOARD

By:   
Steven G. Elliott, Commissioner

A true copy,

Attest:   
Clerk of the Board