

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**POWERS BLOCK PROPERTIES, LLC v. BOARD OF ASSESSORS OF THE
TOWN OF MONTAGUE**

Docket No. F347634

Promulgated:
August 23, 2024

This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Montague ("assessors" or "appellee") to abate a tax on certain real estate located in Montague, owned by and assessed to Powers Block Properties, LLC ("appellant"), for fiscal year 2022 ("fiscal year at issue").

Commissioner Elliott heard this appeal. He was joined by Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier 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 1.32.¹

Robert Obear, manager, for the appellant.

Karen Tonelli, assessor, for the appellee.

¹ Reference is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

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

I. Introduction and jurisdiction

On January 1, 2021, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of a 0.13-acre parcel of land located at 26-28 East Main Street in Montague ("subject property"), improved with an 8,323-square-foot building constructed circa 1900 ("subject building"). The subject building consists of seven residential apartments, with a total of eight bedrooms and seven bathrooms, and one commercial space with a half bathroom. During relevant time periods, only one residential unit remained unrented. The appellant purchased the subject property from the Town of Montague on February 3, 2015, for the price of \$1, along with other properties on the block for an urban renewal-type project.

The assessors valued the subject property at \$841,000 for the fiscal year at issue. A tax was assessed thereon in the amount of \$16,612.36,² exclusive of the Turner Falls Fire District charge. The appellant timely paid the tax due without

² The exact tax rate per \$1,000 is not clear, and this was noted by the appellant in its position statement. The assessors appear to have implemented a hybrid tax rate based upon the dual commercial/residential nature of the subject property.

incurring interest. The appellant filed an abatement application on March 31, 2022.³ The assessors granted a partial abatement on June 29, 2022, reducing the assessed value to \$831,900. Not satisfied with this reduction in value, the appellant filed a statement under informal procedure with the Board on September 21, 2022. Pursuant to G.L. c. 58A, § 7A, the appellee requested a transfer of the appeal to the formal procedure within thirty days of the service of the statement under informal procedure. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

II. The appellant's case

The appellant presented its case through testimony and various documents, including a position statement, deed, mortgage, and web printouts from Patriot Properties Montague WebPro of unadjusted, allegedly comparable properties. The appellant claimed that the subject property and other properties acquired from the Town of Montague "were extremely blighted in a prominent downtown village of Millers Falls" and that Mr. Obear, the manager of the appellant, renovated these properties "into viable commercial/residential spaces reviving the downtown village." The actual cost associated with the subject property's renovation was approximately \$600,000. The appellant contended

³ The due date for payment on the actual tax bill was April 4, 2022.

that its comparable properties were assessed at lower values. These unadjusted, allegedly comparable properties ranged in assessed values of \$300,700 to \$791,700 for the fiscal year at issue, with finished areas of 3,352 square feet to 15,300 square feet, two to twenty-six bedrooms, and valuation per square foot of finished area of \$38.10 to \$63.59 (compared to \$99.95 for the subject property). Stressing that the renovations to the subject property "have contributed to reviving a very depressed area, increasing income for local establishments, and recently fetching a high-end commercial retail store," the appellant argued that the assessment of the subject property was unreasonable compared to similar properties and that "charging excessive taxes makes it difficult for a property owner to meet financial obligations for mortgages, insurance, utilities, taxes, and continued upkeep of the property." The appellant's opinion of fair cash value was \$600,000 for the fiscal year at issue.

III. The appellee's case

The appellee presented jurisdictional documents, as well as photographs of the subject property and a certificate of substantial completion for the subject property issued in 2017. The appellee also noted that the appellant reported \$300,000 in historic tax credits for the entire project, with \$150,000 reported for the subject property. Otherwise, the appellee

rested on the assessed value of the subject property for the fiscal year at issue.

IV. The Board's findings

Based on the evidence presented, the Board found and ruled that the appellant's allegedly comparable properties were unreliable without accounting for differences among those properties and the subject property. The Board lacked specific information and attributes concerning these allegedly comparable properties. The appellant provided no evidence to support a further reduction of the assessed value to \$600,000 for the fiscal year at issue. Conversely, the evidence indicated that all but one of the residential units located in the subject building were rented during relevant time periods. The appellant's contribution to the revival of a blighted area of the Town of Montague - through its purchase of the entire block, including the subject property, for \$1, for which it received significant historic tax credits, particularly for the subject property - as well as alleged hardship in meeting financial obligations, are in the nature of equitable considerations that have no correlation with the fair cash value of the subject property and are therefore not proper considerations for the Board.

Accordingly, the Board found and ruled that the appellant failed to meet its burden of proving that the fair cash value of

the subject property was lower than the assessed value for the fiscal year at issue.

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 this appeal, in support of its claim that the subject property was overvalued for the fiscal year at issue, the appellant offered into evidence the assessed values of purportedly comparable properties. General Laws c. 58A, § 12B provides in pertinent part that at "any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible." The introduction of such evidence may provide adequate support for the granting of an abatement. **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing **Garvey v. Assessors of West Newbury**, Mass. ATB Findings of Fact and Reports 1995-129, 135-36, and **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80.).

However, purportedly comparable properties used in a comparable-assessment analysis must be adjusted, just like those used in a comparable-sales analysis, for differences with the subject property. See **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 402 ("The assessments in a comparable assessment analysis, like the sale prices in a

comparable sales analysis, must also be adjusted to account for differences with the subject."), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (Rule 1:28 Decision); **Lupacchino v. Assessors of Southborough**, Mass. ATB Findings of Fact and Reports 2008-1253, 1269 ("[W]ithout appropriate adjustments . . . the assessed values of [comparable] properties did not provide reliable indicator[s] of the subject's fair cash value.").

In the instant appeal, the appellant submitted evidence of purportedly comparable assessments but failed to provide any adjustments for differences between those properties and the subject property that affect fair cash value. Further, the record contained a dearth of specific information and attributes concerning these allegedly comparable properties. See **Murphy v. Assessors of Marblehead**, Mass. ATB Findings of Fact and Reports 2024-41, 47 ("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 Board, therefore, found that this evidence failed to provide a reliable indication of fair cash value.

Accordingly, the Board found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue and issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By:



Mark J. DeFrancisco, Chairman

A true copy,

Attest:



Clerk of the Board