

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**R.J.G. REALTY HOLDINGS LLC v. BOARD OF ASSESSORS OF THE
TOWN OF WHITMAN**

Docket Nos. F339721 & F342519

Promulgated:
May 23, 2023

These are appeals 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 Whitman ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Whitman, owned by and assessed to R.J.G. Realty Holdings LLC ("appellant") for fiscal years 2020 and 2021 ("fiscal years at issue").

Commissioner Elliott ("Presiding Commissioner") heard these appeals 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 promulgated pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

David W. McCarter, Esq., for the appellant.

Kathleen Keefe, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

On January 1, 2019, and January 1, 2020, the respective dates of valuation and assessment for the fiscal years at issue, the appellant was the assessed owner of real property located at 365 South Avenue in the Town of Whitman ("subject property").

The assessors valued the subject property at \$340,200 for fiscal year 2020 and assessed a tax thereon at the rate of \$15.85 per \$1,000 in the amount of \$5,392.17. The appellant paid the tax due without incurring interest. The appellant filed an abatement application with the assessors on January 7, 2020, which was denied by vote of the assessors on February 11, 2020. The appellant filed a petition with the Appellate Tax Board ("Board") on April 29, 2020.

The assessors valued the subject property at \$360,700 for fiscal year 2021 and assessed a tax thereon at the rate of \$15.50 per \$1,000 in the amount of \$5,590.85. The appellant paid the tax due without incurring interest. The appellant filed an abatement application with the assessors on January 21, 2021, which was denied by vote of the assessors on March 25, 2021. The appellant filed a petition with the Board on May 25, 2021.

Based upon the above, the Board found that it had jurisdiction to hear and decide these appeals. The subject property consists of a 4,128-square-foot building dating back to the 1930s ("subject building"), with a primarily brick exterior, two commercial units, and a half bath. During times relevant to these appeals, the majority of the subject building was rented for furniture storage (at \$1.75 per square foot), with the remainder rented for a market/seafood shop (at \$14.40 per square foot). The subject building sits upon an 11,850-square-foot lot, with a portion of the land proximate to a river.

In presenting its case, the appellant contended that its real estate taxes are disproportionate to its income. Relying upon a position statement offered into evidence, the appellant calculated the taxes on the subject property as approximately 60 percent of the rental income for fiscal year 2020 and approximately 44 percent of the rental income for fiscal year 2021. In the appellant's opinion, the real estate taxes should be no more than 25 to 30 percent of its income. As support, the appellant's owner, Gerald Goulston, relied on his experience regarding tax/expense ratios. Additionally, the appellant cited to numerous alleged troubles - a low basement ceiling, value restrictions due to the river, no heating or water in the storage rental unit, lack of funds for maintenance or

improvements to the subject building, and dangerous street parking.

In addition to jurisdictional documents, the assessors cross-examined the appellant's owner and provided their own testimony through Assessor Keefe, who stated that she visited the subject property but found no reason to change its value.

Based upon the above and the record and testimony in these appeals, the Presiding Commissioner found no basis for a reduction in the assessed values for the fiscal years at issue. The appellant provided no analysis, no comparable properties, no comparable leases, and no expert reports and testimony, other than unsupported testimony from Mr. Goulston, the appellant's owner. While Mr. Goulston may have expertise in tax and expenditure percentages, he provided the Board with no proof or methodology to support the notion that real estate taxes should comprise no more than 25 to 30 percent of income. The relevant inquiry here is fair market value, and the appellant provided no competent evidence of such. Further, critically lacking was any direct correlation between the various internal and external alleged hardships cited by the appellant and a diminution in value of the subject property for each of the fiscal years at issue to a sum that was lower than the assessed value.

Consequently, the Presiding Commissioner found and ruled that the appellant did not meet its burden of proof in

establishing that the fair cash value of the subject property was lower than the assessed value for either of the fiscal years 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 upon which a willing seller and a willing buyer 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 proof in establishing 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 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeals, the appellant provided no evidence of flaws or errors in the assessors' valuation and offered no affirmative evidence that undermined the assessed values for the fiscal years at issue. The allegations of a tax/income imbalance and various hardships had no apparent correlation with a reduction in the assessed values and the appellant provided no correlation. See **Fox v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2021-479, 482 (finding "no evidence of flaws or errors in the assessors' valuation"); **Coyle and Radulski v. Assessors of Amesbury**, Mass. ATB Findings of Fact and Reports 2015-149, 156 ("The Presiding Commissioner therefore found that the appellants' overall presentation was too vague and general and lacked specific data on the subject property's fair market value."); see also **Nelson v. Assessors of Wilmington**, Mass. ATB Findings of Fact and Reports 2013-320, 342 (holding that "[n]ot every nuisance . . . must result in a reduction in fair market value" and the taxpayers "failed to quantify any diminution in value"); **Harlow v. Assessors of**

Kingston, Mass. ATB Findings of Fact and Reports 2020-456, 460
(finding "no evidence of any quantifiably negative impact").

Based upon the above and the record in its entirety, the Presiding Commissioner found and ruled that the appellant failed to establish that the fair cash value of the subject property was less than its assessed value for either of the fiscal years at issue. Accordingly, the Presiding Commissioner issued a single-member decision for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

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