

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PAUL & MARTHA SCHEFFER

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

Docket Nos. F339357, F341941

Promulgated:
September 6, 2022

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 Shrewsbury ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Shrewsbury, assessed to Paul and Martha Scheffer ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal years 2019 and 2020 ("fiscal years at issue").

Commissioner Elliott heard the appeals. He was joined by Chairman DeFrancisco and Commissioners Good and Metzger in the decisions for the appellee.

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

Paul Scheffer, pro se, for the appellants.

Ruth T. Anderson, Principal Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and testimony submitted by the parties during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2018 and January 1, 2019, the valuation and assessment dates for the fiscal years at issue, the appellants were the assessed owners of a 0.4-acre improved parcel of land with an address of 62 Westwood Road in Shrewsbury ("subject property"). The pertinent jurisdictional information is summarized in the following chart.

Fiscal year	Assessed value	Tax amount/ Tax rate (per \$1,000)	Taxes timely paid?	Abatement application filed	Date of deemed denial	Petition filed with Board
2019	\$542,500	\$6,819.23 \$12.57	Y	02/01/2019	05/01/2019	07/31/2019
2020	\$579,900	\$7,231.35 \$12.47	Y	01/31/2020	04/30/2020	01/14/2021 ¹

Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2019.

As will be explained more fully in the Opinion below, the Board found and ruled that it lacked jurisdiction to hear and decide the appeal for fiscal year 2020. The appellee failed to send a notice of its deemed denial of the appellants' abatement application for fiscal year 2020, which allowed the appellants

¹ The appellant's petition was stamped as received by the Board on January 22, 2021, but the petition was mailed in an envelope postmarked January 14, 2021. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

additional time to file their Petition. Even after allowing an extension for this circumstance, the fiscal year 2020 appeal was filed beyond the statutory deadline prescribed by G.L. c. 59, §§ 64 and 65. Therefore, as will be explained in the Opinion, the Board found and ruled that it lacked jurisdiction over the appeal for fiscal year 2020.

The subject property was improved with a single-family home that had a total of seven rooms, including three bedrooms, as well as two full bathrooms ("subject home"). Other amenities included two fireplaces as well as a three-car garage.

The subject property's property record card listed the total living area as 2,443 square feet, but the appellants contended that the living area was 2,199 square feet based on their calculations, which they based on the interior space of the subject home's individual rooms.

The appellants also contended that the subject property's assessed value did not account for conditions that, in the appellants' opinion, reduced its fair cash value for the fiscal years at issue. The appellants submitted pictures to document wear and tear to the subject property as well as its adjacent sidewalk and street. Thus, the appellants argued that the subject property's depreciation codes as listed on the property record card did not adequately account for the subject property's age and condition.

The appellants further contended that the value of the subject property was compromised by a *lis pendens* relating to an outstanding title dispute over the subject property. The dispute was reflected in an Affidavit of Title that was registered in Land Court on October 27, 2004. The appellants claimed that the *lis pendens* would discourage potential buyers, thus compromising the value of the subject property, but they submitted no evidence of subsequent action or the merit, if any, of this claim.

The appellants presented their valuation witness, Albert George, whom the Board qualified as an expert in residential real estate valuation. Mr. George presented his appraisal report for the subject property. Mr. George adopted the appellants' measurements for the living area of the subject property. He then performed a comparable-sales analysis, selecting four purportedly comparable properties for comparison with the subject property. After applying his adjustments for components including condition, size, age, room count, and finished living area, Mr. George arrived at an adjusted fair cash value of \$510,000 for the subject property as of the relevant assessment date for fiscal year 2019.

The appellee cross-examined Mr. George, and the presiding Commissioner also posed questions during the hearing. However, when asked questions about the selection of his purportedly comparable properties, some of which were not similar to the subject property, and questions regarding his adjustments to his

purportedly comparable properties, Mr. George responded that he was unable to access his notes, and he therefore could not answer specific questions about his appraisal. The Board found that Mr. George's inability to defend his appraisal fatally undermined his credibility.

The appellee further presented an Affidavit of Title by Attorney Charles P. Ball. According to his affidavit, Attorney Ball conducted a title search of the subject property dating back at least 50 years. Upon completing this title search, Attorney Ball concluded that all legal issues raised in the Affidavit of Title had been previously litigated and resolved against the person making the claim, and that there remained no further issues in the chain of title of the subject property. The appellee further submitted the deed for the subject property executed by the appellants on October 28, 2004 as well as the mortgage on the subject property executed by the appellants on November 2, 2004.

With respect to the contention that the assessors overvalued the living area of the subject home, the Board noted that the appellants' calculations were based on internal measurements of each room of the subject home. However, as will be explained in the following Opinion, the industry standard for calculating gross living area is by external measurement of the home, not by internal measurement of each room.

The Board was also unpersuaded by the appellants' contention regarding the impact of the *lis pendens* on the fair cash value of the subject property. The appellants offered no proof of its continued viability, including any indication of subsequent legal action. By contrast, the appellee offered an affidavit from an attorney who had conducted a title search, which raised doubt as to the viability of the title dispute. The appellants, moreover, executed their deed and a mortgage on the subject property very soon after the date of the *lis pendens*, demonstrating that the appellants themselves were not deterred by the *lis pendens* and further raised doubt as to the impact of the title dispute over the subject property. The Board thus found that the appellants failed to meet their burden of proving that the 15-year-old title dispute had any effect on the fair cash value of the subject property for fiscal year 2019.

Finally, the Board was not persuaded by the appellants' valuation witness or his appraisal report. First, the appellants' valuation witness simply adopted the appellants' square-footage measurements without further independent inquiry or analysis. Moreover, he selected comparable-sale properties that were not similar to the subject property. Finally, upon cross-examination by the appellee and questioning by the Presiding Commissioner, the appellants' valuation witness was unable to answer specific questions or otherwise support his opinion of value. As a result,

the Board found that the appellants' valuation witness lacked credibility, and his appraisal report thus had no persuasive value.

Therefore, based on the evidence presented, the Board found and ruled that the appellants failed to meet their burden of proving a fair cash value for the subject property that was less than its assessed value for fiscal year 2019.

Accordingly, and having concluded that it did not have jurisdiction to hear and decide the fiscal year 2020 appeal, the Board issued decisions for the appellee in these appeals.

[This space intentionally left blank.]

OPINION

I. Jurisdiction for Fiscal Year 2020

The Board has only that jurisdiction conferred on it by statute. *Stilson v. Assessors of Gloucester*, 385 Mass. 724, 732 (1982). "Since the remedy of abatement is created by statute, the board lacks jurisdiction over the subject matter of proceedings . . . commenced at a later time or prosecuted in a different manner from that prescribed by statute." *Nature Church v. Assessors of Belchertown*, 384 Mass. 811, 812 (1981) (citing *Assessors of Boston v. Suffolk Law School*, 295 Mass. 489, 495 (1936)). General Laws c. 59, §§ 64 and 65 provide that a taxpayer who is aggrieved by the assessors' refusal to abate a tax on real estate may appeal to the Board "within three months after the date of the assessors' decision on an application for abatement . . . or within three months after the time when the application for abatement is deemed to be denied." See also *Berkshire Gas Co. v. Assessors of Williamstown*, 361 Mass. 873 (1972); *Alan Ades v. Assessors of New Bedford*, Mass. ATB Findings of Fact and Reports 1996-287, 289. "The time limit of three months provided for filing the petition by statute is jurisdictional and a failure to comply with it will result in dismissal of the appeal." *Alan Ades*, Mass. ATB Findings of Fact and Reports at 1996-290 (citing *Cheney v. Inhabitants of Dover*, 205 Mass. 501 (1910); *Berkshire Gas Co.*, 361 Mass. at 873)).

Typically, the appellants would have had three months, or until July 30, 2020 to file their petition to the Board for the fiscal year 2020 appeal. Further extending the appellants' statutory timeframe was the fact that the assessors did not send a notice informing the appellants of the denial of their abatement request, as required by G.L. c. 59, § 63. Pursuant to G.L. c. 59, § 65C, the appellants had an additional two months beyond the ordinary three-month period during which to file their fiscal year 2020 appeal. Allowing the additional two months, the appellants' appeal was due on September 30, 2020. However, the appeal was not filed until January 14, 2021.

The Board has no authority to extend the deadline beyond the time allowed by G.L. c. 59, §§ 64 and 65C. See ***Nature Church***, 384 Mass. at 812. As such, because the appellants failed to meet the statutory deadline, the Board lacked jurisdiction to hear and decide the fiscal year 2020 appeal.

Accordingly, the Board decided the fiscal year 2020 appeal for the appellee.

II. Valuation Claim for Fiscal Year 2019

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 are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that 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 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 the 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 appeals, the appellant attempted to expose errors in the appellee's method of valuation of the subject property by challenging certain entries on the property record card. However, the appellants failed to expose any error in the measurement of gross living area, as they calculated the subject property's square-foot area using internal room measurements

instead of the industry standard of measuring the structure's exterior. See THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 199 (15th ed., 2020) (defining "gross living area" as the "[t]otal area of finished, above-grade residential space; calculated by measuring the outside perimeter of the structure"). Similarly, the appellants failed to offer specific evidence as to how the current depreciation codes were inadequate to reflect the condition of the subject property. See, e.g., **Abuzahra v. Assessors of Rowley**, Mass. ATB Findings of Fact and Reports 2008-1514, 1522 (taxpayers failed to meet their burden of proving overvaluation "because they failed to quantify the effects of wetlands or topographical issues on the value of their lots").

Moreover, focusing on the size and condition of the subject home did not further the appellants' contention that the subject property was overvalued. "Under a petition for abatement the question is whether the assessment of the parcel of real estate, including both the land and the structures thereon, is excessive." **Mass. General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Lang v. Assessors of Marblehead**, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding that "'[t]he tax on a parcel of land and the building thereon is one tax' and the ultimate conclusion is whether 'that single assessment is excessive'" and that a "'taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but

rather that the assessment including both components is excessive”) (citations omitted).

The Board was also not persuaded by the appellants’ contention regarding the impact of the *lis pendens* on the fair cash value of the subject property. The appellants failed to advance any proof to quantify the effect, and the continued viability, of the 15-year-old *lis pendens*. Moreover, the affidavit by an attorney who had performed a title search - permitted by G.L. c. 183, § 5B to be recorded evidence of a title’s validity - as well as the appellants’ deed and mortgage on the subject property undermined their contention that title to the subject property was compromised by the *lis pendens*.

Finally, the appellants’ valuation expert was equally unpersuasive. Most importantly, Mr. George could not adequately answer relevant questions concerning fundamental elements of his valuation analyses, particularly with respect to support for his adjustments to his purportedly comparable sales. The Board thus found his testimony and appraisal report to be lacking in credibility and thoroughly unpersuasive. See ***Bodwell Extension, LLC v. Assessors of Avon***, Mass. ATB Findings of Fact and Reports 2006-336, 350.

Given the lack of credible evidence submitted by the appellants, the Board found and ruled that the appellants failed to sustain their burden of proving a fair cash value for the

subject property that was less than its assessed value for fiscal year 2019. Therefore, the Board found and ruled for the appellee in the appeal for fiscal year 2019. The Board further found and ruled that it lacked jurisdiction to hear and decide the appeal for fiscal year 2020.

Accordingly, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

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

A true copy,

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