

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**JOAN TALBOT AND
TIMOTHY FRANKLIN**

v.

**BOARD OF ASSESSORS OF
THE CITY OF NEWTON**

Docket Nos. F335032
& F337344

Promulgated:
July 29, 2020

These are appeals 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 City of Newton ("assessors" or "appellee") to abate a tax on certain real estate located in the City of Newton owned by and assessed to Joan Talbot and Timothy Franklin ("appellants"), for fiscal years 2018 and 2019 ("fiscal years at issue").

Commissioner Rose heard these appeals and was joined in the decision for the appellee by Chairman Hammond and Commissioners Good, Elliott, and Metzger.

These findings of fact and report are made pursuant to a request by the appellants.

Joan Talbot and Timothy Franklin, pro se, for the appellants.

James Shaughnessy, assessor, and David Velluti, assistant 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 Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2017, and January 1, 2018, the relevant valuation and assessment dates for the fiscal years at issue, the appellants were the assessed owners of a 2,300-square-foot condominium unit located at 106 Washington Park, Newtonville, in the City of Newton ("subject unit"). The subject unit is a townhouse-style unit with four bedrooms, two bathrooms, and one half bathroom.

For fiscal year 2018, the assessors valued the subject unit at \$1,053,600, and assessed a tax thereon, at the rate of \$10.82 per thousand, in the amount of \$11,513.95, inclusive of a Community Preservation Act ("CPA") surcharge. The appellants timely paid the tax due without incurring interest. On February 1, 2018, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which the assessors denied on March 27, 2018. In accordance with G.L. c. 59, §§ 64 and 65, the appellants timely filed an appeal with the Board on May 7, 2018.

For fiscal year 2019, the assessors valued the subject unit at \$1,064,900, and assessed a tax thereon, at the rate of \$10.45

per thousand, in the amount of \$11,239.49, inclusive of a CPA surcharge. The appellants timely paid the tax due without incurring interest. On February 1, 2019, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors, which the assessors denied on March 8, 2019. In accordance with G.L. c. 59, §§ 64 and 65, the appellants timely filed an appeal with the Board on March 13, 2019.

In support of their claim that the subject unit was assessed at a value higher than its fair cash value for each of the fiscal years at issue, the appellants offered into evidence photographs of the subject unit's interior and exterior; the subject unit's property record card; the master deed for Claflin Park Condominium; the unit deed for the subject unit; a Notice of Issues and Demand for Action Pursuant to Mass. R. Civ. P. 23.1 from a law office retained by the appellants to unit owners and trustees of Claflin Park Condominium Trust "with respect to certain issues related to the management and administration of the Trust," including financial mismanagement; the declaration of trust for Claflin Park Condominium Trust; and a chart showing the increased annual expenses paid by the appellants for various fees or supplemental assessments.

The assessors introduced the relevant jurisdictional documents into the record and rested on the presumed validity of the assessed values for the fiscal years at issue.

Based upon the record in its entirety, the Board found that the appellants failed to establish that the assessed values of the subject unit for the fiscal years at issue exceeded their fair cash values. The appellants' allegations of mismanagement and photographs delineating "outdated" fixtures and areas in need of repair provided insufficient meaningful evidence of an impact on value. There is no quantifiable connection between these circumstances and purported overvaluation. Instead, the appellants appear to seek redress of grievances with their condominium trust through claims for a reduction in assessed values and abatements for the fiscal years at issue. However, the appellants failed to prove that the existence of their purported grievances resulted in fair cash values that were less than the subject unit's assessed values for the fiscal years at issue.

Accordingly, the Board found and ruled that the appellants failed to meet their burden of proving an entitlement to an abatement for the fiscal years at issue and issued a decision for the appellee in these appeals.

OPINION

The assessors are required to assess real estate at its full and 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 in a free and open market will agree if both 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 subject unit 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 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, 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 appellants offered no evidence of

overvaluation. They neither exposed flaws in the assessors' method of valuation nor introduced affirmative evidence to undermine the assessors' valuation.

Accordingly, based upon all the evidence in the record, the Board found and ruled that the appellants failed to meet their burden of proving that the assessed values of the subject unit for the fiscal years at issue exceeded their fair cash values, and consequently issued a decision for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Chairman

A true copy:

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