

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**FREDERICK & JENNIFER WARDWELL v.     BOARD OF ASSESSORS OF  
THE TOWN OF WELLESLEY**

Docket No. F337568

Promulgated:  
June 22, 2021

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 Wellesley ("appellee" or "assessors") to abate a tax on real estate in Wellesley owned by and assessed to Frederick and Jennifer Wardwell ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him in the 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.

*Frederick Wardwell, pro se, for the appellants.*

*Donna McCabe, Assessor, for the appellee.*

## **FINDINGS OF FACT AND REPORT**

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

On January 1, 2018, the valuation date for the fiscal year at issue, the appellants were the assessed owners of an improved parcel of real estate located at 32 Donizetti Street in Wellesley ("subject property"). The parcel contained approximately 23,700 square feet of land, which was improved with a Colonial-style, single-family dwelling with 1,958 square feet of living area. There were seven rooms, including four bedrooms, two full bathrooms, and one half-bathroom.

The assessors valued the subject property at \$976,000 for the fiscal year at issue and assessed a tax thereon in the amount of \$11,393.67, which included the town's Community Preservation Act surcharge. The appellants timely paid the tax due without incurring interest and timely filed their abatement application with the assessors on January 16, 2019. The assessors denied the application on March 4, 2019, and on April 30, 2019, the appellants seasonably filed their appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellants asserted both that the subject property was overvalued for the fiscal year at issue and that it had been disproportionately assessed. In support of these assertions, the appellants compared the subject property's land value to the land values of several nearby properties and noted that the subject property's assessed value had increased significantly since the prior fiscal year. The appellants did not dispute the assessed value of the dwelling situated on the subject property.

In particular, the appellants focused on the land values of seven properties on Donizetti Street as well several other nearby properties, indicating the properties' square footage, street frontage, and land valuation. Of the properties located on Donizetti Street, only one parcel was similar in size to the subject parcel, while the balance were, on average, one third its size. Most of other properties cited by the appellants were also significantly smaller than the subject property.<sup>1</sup>

For their part, the assessors offered a comparable-sales analysis that included four sales of comparable property, one of which was on Donizetti Street. The Board found that these sales - which occurred within a reasonable

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<sup>1</sup> Interestingly, the land values for the only two properties that were similar in size to the subject property were higher than the subject property's land value.

time of the relevant assessment date, were all within 1.2 miles of the subject property, and were adjusted by the assessors - provided credible evidence that the subject property's assessed value did not exceed its fair cash value for the fiscal year at issue.

In sum, based on the evidence of record, the Board found and ruled that the appellants failed to meet their burden of demonstrating that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

#### OPINION

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 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).

An appellant has the burden of proving that the 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 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[] . . . [sustains] 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 appeal, the appellants failed to present persuasive evidence of overvaluation, and their almost singular focus on the subject property's land value was unavailing. A taxpayer does not "establish a right to abatement merely by showing that his land or building is overvalued. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'" *Hinds v. Assessors of Manchester-by-the-Sea*, Mass. ATB Findings of Fact and Reports 2006-771, 778 (quoting *Assessors of Brookline v. Prudential Insurance Co.*, 310 Mass. 300, 317 (1941)).

In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Buckley v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-110, 119; **Jernegan v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-39, 49. By failing to integrate both the value of land and improvements into their analysis, the appellants also failed to offer probative evidence of overvaluation.

Further, the parcels offered by the appellants for comparison with the subject property, and particularly those on the same street as the subject property were, by and large, significantly smaller than the subject parcel, calling into question their comparability to the subject parcel. See **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972) ("The properties used in a comparable-assessment analysis must be comparable to the subject property in order to be probative of the fair cash value.")

The appellants' claim that the subject property had been disproportionately assessed was without merit. "[T]o obtain relief on the basis of disproportionate assessment,

a taxpayer must show that there is an intentional policy or scheme of valuing properties or classes of property at a lower percentage of fair cash value than the taxpayer's property." **Brown v. Board of Assessors of Brookline**, 43 Mass. App. Ct. 327, 327 (1997). No such evidence was presented in this appeal.

Finally, the assessors presented a credible comparable-sales analysis in support of the contested assessment. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 394 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107, Decision Under Rule 1:28 (2008).

The assessors' analysis incorporated four sales of comparable property, one of which was on Donizetti Street. The sales occurred within a reasonable time of the relevant assessment date, were all within 1.2 miles of the subject property, and were adjusted by the assessors. Thus, the Board found and ruled that the comparable sales provided credible evidence that the subject property's assessed

value did not exceed its fair cash value for the fiscal year at issue.

Based on the foregoing, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. Moreover, the comparable-sales analysis presented by the assessors supported the subject property's assessed value. The Board, therefore, issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

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

A true copy,

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