



THE COMMONWEALTH OF MASSACHUSETTS

Appellate Tax Board

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Docket No.F331166

**STEPHEN AND ELLEN GALLAGHER
Appellants.**

**BOARD OF ASSESSORS OF
THE TOWN OF SUDBURY
Appellee.**

DECISION WITH FINDINGS

The Decision is for the appellee. On the basis of the evidence offered at the hearing of this appeal, the Presiding Commissioner made the following findings of fact and rulings of law.

This appeal involves a 0.29-acre parcel of land improved with a two-family dwelling located at 44 Willis Lake Drive in Sudbury ("subject property"). The subject property's dwelling contains a total of eight rooms, including four bedrooms, along with two full bathrooms and one three-quarter bathroom. Its assessed value for fiscal year 2016 ("fiscal year at issue"), as partially abated by the assessors, was \$390,000.

There was conflicting evidence in the record as to the age of the dwelling. The property card for the subject property stated that it had been built circa 1945. However, appellant Stephen Gallagher, who was the lone witness in this appeal, testified that the dwelling actually dated back to the 1920s. Mr. Gallagher, who has owned the subject property since 1972, shared some of its colorful history in presenting his case. The Presiding Commissioner found his testimony to be credible.

Mr. Gallagher stated that the dwelling was originally a dance hall, and, during the prohibition era, served as a "speak-easy." It later housed a store, with an apartment in the back, and at one point had been heavily damaged by fire. Eventually an addition was constructed, adding another living area and making the dwelling the two-family property that it is today.

Mr. Gallagher testified that the subject property has many outdated and unappealing features, such as: a crawl space instead of a basement; original cabinets in

the kitchens including pull-out box drawers; no trim on the interior of the windows; and no gutters or downspouts, resulting in dampness both outside and inside the dwelling. It also had some unusual interior features, such as structural beams extending to the high ceilings, attributable to its dance-hall past. He explained that in 2006, he improved the façade of the subject property by adding new siding and a faux Cape-Cod-style roof. These improvements resulted in enhanced curb appeal for the subject property, but the interior features remained unchanged, as evidenced by the interior and exterior photographs entered into the record.

In addition to his testimony and the photographs, Mr. Gallagher offered into the record the unofficial property record cards for two neighboring properties. The property located at 40 Willis Lake Drive, which featured a single-family dwelling constructed in 1959, had approximately the same lot size, and assessed land value, as the subject property. That property's assessed building value was \$63,200, bringing its total assessed value for fiscal year 2016 to \$329,100. The property located at 50 Willis Lake Drive, which featured a single-family dwelling constructed in 1964, also had approximately the same lot size, and assessed land value, as the subject property. That property's assessed building value was \$80,300, bringing its total assessed value for fiscal year 2016 to \$346,200. No other comparative information about these or other properties was entered into the record, nor any evidence of timely, comparable sales.

It was Mr. Gallagher's contention that the subject property was overvalued for the fiscal year at issue, with an exclusive focus on its assessed building value. Mr. Gallagher stated that at one point in time, the assessors placed a value of zero on the dwelling, attributing the subject property's entire assessment to its land value. He stated that following the exterior improvements in 2006, the assessors once again attributed value to the subject dwelling. However, it was his opinion that the assessors failed to take into consideration the poor condition and structural oddities of the subject property in setting its building value, and that the building value was excessive as compared to the neighboring properties.

The assessors, for their part, did not offer a case, nor did they even appear at the hearing of this appeal. They instead submitted the requisite jurisdictional documents via facsimile, and rested on the assessed value of the subject property, as partially abated.

The appellant has the burden of proving that the property has a lower value than its assessed value. See **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). "The burden of proof is upon the petitioner to make out its right as [a] matter of law to [an] abatement of the tax." *Id.* (quoting **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). 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 of them are fully informed and under no compulsion. **Boston Gas Co. v. Assessors of Boston**, 334 Mass. 549, 566 (1956).

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. v. Assessors of Lynn*, 393 Mass. 591, 600 (1984) (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)).

Although the photographic evidence and credible testimony demonstrated that the subject property is old and in relatively poor condition, the Presiding Commissioner could not determine on this record that its assessed value exceeded its fair cash value for the fiscal year at issue. No evidence of comparable market sales was offered by the appellant. Further, although comparable assessment data may be relied upon in determining a property’s fair cash value, the Presiding Commissioner found that the assessment data provided by the appellant was lacking in several respects. As an initial matter, the information contained on the unofficial property record cards did not report the square footage of the two properties offered for comparison, and no analysis of this very basic measure of comparison could be made. Additionally, the two properties offered for comparison featured single-family residences, while the subject property contains a two-family residence. The appellant failed to address the impact on market value, if any, of this difference, and the Presiding Commissioner found that the assessed values of these two-single family residences, without more, did not furnish a reliable or persuasive indication of the subject property’s fair cash value.

Because the appellant failed to present reliable evidence of the subject property's fair cash value for fiscal year 2016, the Presiding Commissioner was forced to rely on the presumptive validity of the assessment, and issued a decision for the appellee. See *The May Department Store Co. v. Assessors of Newton*, Mass. ATB Findings of Fact and Reports 2009-153, 195.

This is a single-member decision promulgated in accordance with G.L. c. 58A, § 1A.

APPELLATE TAX BOARD

By: Patricia M. Good
Patricia M. Good, Commissioner

Attest Stephanie B. Minn
Clerk of the Board

Date: **MAY 18 2017**
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.

Location: 44 Willis Lake Drive
Year: 2016