COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# JOHN D. BARON,  v.        BOARD OF ASSESSORS OF

**JENNIFER A. JORDAN &      THE TOWN OF LEXINGTON**

**DONNA L. BARON**

Docket No. F331845       Promulgated:

      May 16, 2018

 This is an appeal filed under the informal procedure[[1]](#footnote-1) pursuant to G.L. c. 58A, § 7A and G.L. c. 62C, § 39 from the refusal of the Board of Assessors of the Town of Lexington (“assessors” or “appellee”), to abate a tax on certain real estate owned by and assessed to John D. Baron, Jennifer A. Jordan and Donna L. Baron (“appellants”) under G.L. c. 59, §§ 11 and 38 for fiscal year 2016 (“fiscal year at issue”).

 Chairman Hammond heard this appeal and, together with Commissioners Scharaffa, Rose, Chmielinski and Good, issued a decision for the appellants.

 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.

 *Donna Baron, pro se*, for the appellants.

 *Anthony Ambriano*, Esq. for the appellee.

## FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board (“Board”) made the following findings of fact.

On January 1, 2015, the appellants were the assessed owners of a parcel of land, identified on assessors’ Map 72 as Lot 445 and with an address of 33 Centre Street in Lexington (“subject property”). According to the property record card on file with the appellee, the subject property is a 17,242 square foot parcel improved with a conventional-style, single-family, 2-story home with an in-law suite and containing 3,818 square feet of living area (“subject home”). For the fiscal year at issue, the appellee valued the subject property at $1,437,000 and assessed a tax thereon, at the rate of $14.60 per $1,000, in the total amount of $21,565.81, which includes a Community Preservation Act (“CPA”) surcharge. The appellants timely paid the tax due without incurring interest, and on January 27, 2016 they timely filed an abatement application with the appellee. On April 21, 2016, the appellee granted the appellants’ abatement request in part, reducing the assessed value of the subject property to $1,047,000. Not satisfied with the abatement, the appellants seasonably filed an appeal with the Board on July 20, 2016. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

According to the appellants, the subject home is comprised of 10 rooms, including 4 bedrooms, as well as 3 full bathrooms and 1 half bathroom. According to the property record card, however, the subject home is comprised of 14 rooms, including 6 bedrooms, as well as 5 full bathrooms and 1 half bathroom. The subject property also includes a detached garage with a finished room; the property record card lists the finished area as containing 1,601 square feet, but the appellants claim it contains only 552 square feet.

The subject property was the subject of an earlier appeal for fiscal year 2014. The Board decided the fiscal year 2014 appeal in favor of the appellants and determined that the fair market value of the subject property was $900,000. For fiscal year 2015, the appellee assessed the subject property at $933,000, which the appellants did not contest. The appellants’ opinion of value for the subject property for the fiscal year at issue is $900,000, which was the Board’s opinion of value for fiscal year 2014. Because the fiscal year at issue in this appeal is within 2 fiscal years of fiscal year 2014, the burden is on the appellee to justify an assessment that is greater than the Board’s fiscal year 2014 value determination. *See*G.L. c. 58A, § 12A.

The appellee presented its case-in-chief through the testimony of Robert Lent, the Director of Assessment for the Town of Lexington. Mr. Lent testified that the Town of Lexington underwent a town-wide revaluation of its properties in fiscal year 2015. He testified that town-wide revaluations are mandated and overseen by the Department of Revenue, and the process involves the complete reassessment of all properties starting from “scratch,” which he explained meant that the assessors do not merely adjust existing assessments up or down, but instead they completely analyze the fair market value of each individual property in the town.

Mr. Lent testified that the increase in assessed value for the subject property was attributable to overall increases in sales prices of residential properties in Lexington, as reflected in the assessors’ studies of residential property values in the town of Lexington. He first testified that the sale prices of residential properties had increased by 15% from January 1, 2014 through January 1, 2016, but he later testified that they had increased by 19%. The assessment at issue reflected a 16.3% increase over the value found by the Board for fiscal year 2014.

Mr. Lent further testified that, when the assessors granted the partial abatement for the fiscal year at issue, they changed the use code of the subject property from “single-family with accessory” to “two family,” which resulted in a lower adjusted base rate of $170.01 per square foot, down from the original $245.01 per square foot.

The appellants presented their case-in-chief through the testimony of John Baron, an owner and resident of the subject property, as well as the submission of documents, including charts, maps and a video depicting air traffic and highway traffic noise at the subject property.

Mr. Baron testified to the following issues that the appellants believe either compromised the value of the subject property or were not properly considered by the appellee in making the subject assessment.

The appellants first contended that the noise caused by planes flying to and from nearby Hanscom Air Force Base and by the traffic from nearby Interstate 95 negatively impacted the fair market value of the subject property. The appellee maintained that it did not provide adjustments for highway traffic or air traffic noise for properties in Lexington. To rebut this, the appellant offered property record cards and a chart to illustrate 9 nearby properties that had received land-value reductions ranging from 10% to 26.4% for highway noise and 15 properties that received 17.2% land value reductions for airport noise. When confronted with this documentation, Mr. Lent testified that he was unaware that the assessors, who worked under his direction, had made these adjustments.

The appellants further offered evidence of the assessors’ inconsistent treatment of a number of factors relied in setting the subject property’s assessment for the fiscal year 2014 to fiscal year 2016 period. For example, the appellants produced property record cards to demonstrate that the assessors had changed the condition grade of the subject property 4 times -- from C to D+ to B to B- -- from fiscal year 2014 through the fiscal year at issue, including a change after the assessors’ partial abatement. The assessors also changed the number of rooms of the subject house from 10 to 14, as well as the number of bedrooms and bathrooms, during this same time. There was no evidence of any building permits or other evidence of construction put forth documenting these increases.

On the basis of the evidence, the Board found that Mr. Lent’s testimony that the Town had undergone a revaluation of all of its property during the fiscal year prior to the fiscal year at issue was not sufficient to justify the increase in the subject property’s fair market value over the Board’s determination for fiscal year 2014. Mr. Lent did not point out any changes to the subject property to justify the increased assessment, nor did he present an actual comparable-sales analysis to justify this increase, instead speaking generally of a 15% increase in property values, testimony which he himself later contradicted to justify the subject property’s 16.3% increase in assessed value. Moreover, in weighing the evidence, the Board noted several inconsistencies in the various property record cards for the subject property. These included inconsistencies in room counts, living area measurements, and construction grade, with no building permits or other evidence to substantiate these myriad changes. The Board further found discrepancies between the subject property and nearby properties for the appellee’s adjustments based on the impact of air traffic and highway noise and that the assessors failed to properly consider the impact of highway and air traffic on the value of the subject property. The Board ultimately found that the appellee failed to produce evidence sufficient to justify the increase in the subject property’s fair market value from fiscal year 2014 to the fiscal year at issue. The Board found and ruled that the subject property’s fair market value for the fiscal year at issue was $900,000.

Accordingly, the Board issued a decision for the appellants and ordered an abatement of $2,210.59, including the CPA surcharge.

**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 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).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974)(citing ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains his burden of proving otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting***Schlaiker***, 365 Mass. at 245).

If, however, the assessment at issue exceeds the Board's prior determination of the subject property’s fair cash value for either of the 2 immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A**,** “the burden shall be upon the [assessors] to prove that the assessed value was warranted.” ***Finlayson v. Assessors of Billerica,*** Mass. ATB Findings of Fact and Reports 2007-531, 538. Accordingly, because the Board’s fiscal year 2014 determination of value was less than the fiscal year 2016 assessed value, as abated, for the subject property, the Board ruled in this appeal that the burden of going forward to justify the increase in the assessment was on the assessors. *See generally* ***Beal v. Assessors of Boston,*** 389 Mass. 648 (1983); *see also* ***Cressey Dockham & Co., Inc. v. Assessors of* *Andover,*** Mass. ATB Findings of Fact and Reports 1989-72, 86-87 (“Once a prior determination of the Board of the fair cash value of the same property [for 1 of the prior 2 fiscal years] has been placed in evidence, [] the statute requires the [assessors] to produce evidence to ‘satisfy the Board that the increased valuation was warranted.’”).

In the present appeal, the assessors had the burden of producing evidence to justify the increase in the subject property’s assessment from its fiscal year 2014 assessment. The assessors produced little evidence of value, relying primarily on Mr. Lent’s testimony explaining that the Town had undergone a recent revaluation of all of its property. However, the Board found that the appellee’s bare assertion of a town-wide revaluation did not justify an increase in the subject property’s assessed value for the fiscal year at issue, absent a showing that the value of the subject property exceeded its fiscal year 2014 value. Moreover, the appellants pointed out several discrepancies in the subject property’s assessment, including living area measurement and room count, sufficient to call into question the validity of that assessment. The Board further found discrepancies between the subject property and nearby properties for the appellee’s noise adjustments. The Board thus found and ruled that the appellee failed to meet its burden of producing evidence sufficient to justify the increase in assessment.

Accordingly, the Board issued a decision for the appellants.

**THE APPELLATE TAX BOARD**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr. Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. Within thirty days of the service of the appeal, the Town of Lexington, in accordance with G.L. c. 58A, § 7A, elected to have the appeal heard under the formal procedure. [↑](#footnote-ref-1)