

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JAMES T. and ALICE E. MULROY v. BOARD OF ASSESSORS OF
THE TOWN OF NEEDHAM

Docket No. F285570

Promulgated:
December 3, 2007

This is an appeal 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 appellee to abate taxes on real estate located in the Town of Needham owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2006.

Commissioner Rose heard the appeal. Commissioners Scharaffa and Egan 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.

James T. Mulroy, pro se, for the appellants.

Chip Davis, assessor, 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, 2005, James T. and Alice E. Mulroy ("appellants") were the assessed owners of a 1.03-acre parcel of real estate located at 51 Forest Street in the Town of Needham ("subject property"). The parcel is improved with a single-family home with 2,992 square feet of finished living area. The property is situated directly across the street from the entrance to a private, gated community near the Wellesley Country Club (the "Clarke Road neighborhood").¹

For fiscal year 2006, the Board of Assessors of the Town of Needham ("assessors") valued the subject property at \$833,200 and assessed a tax thereon, which the appellants paid timely, at a rate of \$8.80 per thousand, plus a Community Preservation Act surcharge, for a total amount of \$7,476.60. The appellants timely filed an application for abatement with the assessors on January 30, 2006. On March 27, 2006, the assessors granted a partial abatement and reduced the assessment of the subject

¹ This neighborhood consists of properties located on Clarke Road, Clarke Circle, and Glendale Road.

property to \$816,200. On June 15, 2006, the appellants seasonably filed a petition under the formal procedure with the Board. Based on these facts, the Board found that it had jurisdiction to hear and decide this appeal.

The appellants purchased the subject property on August 2, 2004 for \$815,000. Notwithstanding this sale, they argued that the fair cash value of the subject property on the relevant assessment date of January 1, 2005 was \$719,500, and that the property was therefore overvalued for fiscal year 2006. Specifically, they contended that the land component of the subject assessment was too high because the assessors adopted an incorrect neighborhood factor to arrive at the land value.

The assessors used two different neighborhood classes in the general vicinity of the subject property: class 0 and class 1. One of the key differences between the two classes is that 10,000-square-foot primary lots in class 0 are assessed at \$365,000, while similarly sized primary lots in class 1 are assessed at \$465,000. The subject property was designated as class 1 for fiscal year 2006. The appellants submitted evidence in an attempt to prove that for the fiscal year at issue, every other property on Forest Street was designated as class 0, while the subject

property and properties in the Clarke Road neighborhood were designated as class 1.

The appellants argued that the land component of their property ought to be assessed at the same amount as the adjacent property at 37 Forest Street, which contained the same land area as the subject property. The only difference between the two properties in terms of the land component, according to the appellants' evidence, was that 37 Forest Street was in a class 0 zone, and the subject was in a class 1 zone. Accordingly, the appellants argued that the subject property's primary lot was assessed at a value \$100,000 greater than that of the 37 Forest Street property. The overall assessments, including both land and building components, for the subject property and the 37 Forest Street property for fiscal year 2006 were \$816,200 and \$661,800, respectively.

Relying on property record cards and other evidence, the appellants also argued that properties in the Clarke Road neighborhood that recently sold were assessed for fiscal year 2006 at, on average, 80% of the amount for which they actually sold. In contrast, the subject property had been assessed at a value slightly higher than the amount for which it had sold. However, the Board gave this evidence little weight; since the properties, upon

which the appellants relied, unlike the subject property, were sold after the fiscal year 2006 valuation date of January 1, 2005, the assessors had not yet considered these sales when they valued those properties for fiscal year 2006. Moreover, the appellants failed to present sufficient evidence pertaining to the market conditions during the relevant time period. Accordingly, the appellants' comparison of sale prices to assessed values of the subject property and the Clark Road properties was not persuasive.

In defense of the subject assessment as abated, the assessors submitted the deed for the subject property as evidence of the appellants' purchase of the subject property on August 2, 2004 for \$815,000, only five months prior to the January 1, 2005 assessment date for fiscal year 2006. Additionally, they submitted evidence of the sales of other properties in the Clarke Road neighborhood and on Forest Street. The lists of sales data provided by the assessors were sorted by neighborhood class factor and indicated that the adjacent property at 37 Forest Street was, like the subject property, a class 1 property, with its primary lot accordingly assessed at \$465,000, which conflicts with the appellants' contention that it was a class 0 property.

On the basis of the above evidence, the Board found and ruled that the appellants failed to prove that their property was overvalued for fiscal year 2006. The Board found that the appellants' purchase of the subject property on August 2, 2004 for \$815,000 was the best evidence of the property's fair cash value, since it is proximate in time to the relevant assessment date of January 1, 2005. The appellants made no attempt to show that the sale was not made at arm's length or that it was in any other way an unreliable indicator of the property's fair cash value. Therefore, the Board considered the sale to be the best evidence of the subject's fair cash value, notwithstanding the appellants' opinion that it ought to be a class 0 rather than a class 1 property.

The Board further found that the difference between the overall assessments for the subject property and the 37 Forest Street property was justified due to several disparities in the values of the respective dwellings. For example, according to the property record cards submitted by the appellants, the house at 37 Forest Street was significantly smaller than the subject property: it is a two-bedroom, 1.5-story residence containing 1,834 square feet of finished living area, compared with the four-

bedroom, two-story subject residence containing 2,992 square feet. In addition, the subject property was built in 1985, is in "good condition," and has central air conditioning; the property at 37 Forest Street was built in 1935, is in "average condition," and has no central air conditioning. The Board found that these differences justified a higher overall assessed value for the subject property than for the property at 37 Forest Street.

Further, the Board found little merit to the appellants' argument that the subject property should not be compared with properties on Clarke Road. The Board found that the properties on which the assessors relied in the Clarke Road neighborhood were more comparable to the subject property than the properties on Forest Street offered by the appellants. Although the subject property is on Forest Street, it is directly across the street from the Clarke Road neighborhood and is significantly closer to properties in that neighborhood than to many of the Forest Street properties offered by the appellants.

In sum, the Board found that the evidence and arguments offered by the appellants were unpersuasive, particularly in light of the purchase price paid by the appellants for the subject property just five months before

the relevant assessment date. 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 as of the first day of January of each year. G.L. c. 59, § 38. Fair cash value is defined as the price upon which a willing buyer and a willing seller would agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The burden of proof is upon the taxpayer to make out a right to an abatement as a matter of law. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The assessment is presumed to be valid until the taxpayer sustains its burden of proving otherwise. ***Id.*** A taxpayer may prove a right to an abatement by either introducing affirmative evidence of fair cash value, or by proving that the assessors erred in their method of valuation. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984).

Actual sales of the subject property itself are "very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the

property under appeal]." *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 469 (quoting *First Nat'l Stores, Inc. v. Assessors of Somerville*, 358 Mass. 554, 560 (1971)). See *Kane v. Assessors of Topsfield*, Mass. ATB Findings of Fact and Reports 2000-409, 411 (finding that a sale of the subject property three months before the relevant assessment date was the best evidence of the subject's fair cash value absent any evidence of compulsion).

In the present appeal, there was an actual sale of the subject property on August 2, 2004, approximately five months prior to the relevant assessment date of January 1, 2005. The appellants made no attempt to argue that the sale was made under compulsion or was in any other way not an arm's-length transaction nor did they show that market conditions justified a reduction in the sale price from the date of sale to the relevant assessment date. Therefore, the Board considered it to be the best evidence on the record of the subject property's fair cash value. Since the sale was for \$815,000, and the partially abated assessed value of the subject property was \$816,200, the sale offers considerable support for the Board's finding that the assessors did not overvalue the subject property.

Sales of other comparable properties are also strong indicators of fair cash value. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 682 (1982). In the present appeal, both parties submitted evidence of sales of properties in the Clarke Road neighborhood, which the Board found to be sufficiently comparable to the subject property. The Board found that this comparable-sales evidence further supported a finding that the assessed value of the subject property, as abated, did not exceed its fair cash value as of the relevant assessment date.

In an abatement appeal, the only relevant inquiry is whether the overall assessment of the subject property, including both the land and building components, is excessive. **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Guernsey v. Assessors of Williamstown**, Mass. ATB Findings of Fact and Reports 2006-158, 168-169; **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, 48-49. Although the two components may be valued separately for statistical purposes, and both are individually open to inquiry and revision by the Board, the tax assessed on real estate is

one tax, so a taxpayer is only eligible for an abatement if that single tax is excessive. **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 317 (1941).

In the present appeal, the appellants only challenged the assessment of the land component of the subject property. As discussed above, however, the Board found that the evidence of the recent sale of the subject property and comparable sales in the Clarke Road neighborhood prove that the subject property as a whole was properly assessed at its fair cash value.

Similarly, the Board found that the appellants' comparison of the assessments of the subject property and the property at 37 Forest Street is flawed, because it only considered the land components of the two properties. Based on the multitude of differences between the dwellings on these two properties, the Board found that there is ample justification for a higher assessed value on the subject property than the property at 37 Forest Street.

Based on the evidence presented, the Board found and ruled that the appellants did not meet their burden of establishing overvaluation of the subject property for fiscal year 2006.

Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
James D. Rose, Commissioner

A true copy,

Attest: _____
Clerk of the Board