

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

AUSTIN & SUSAN KOLBERT

v.

BOARD OF ASSESSORS OF
THE TOWN OF PELHAM

Docket Nos. F305956

Promulgated:
March 17, 2011

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 Board of Assessors of the Town of Pelham ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Pelham owned by and assessed to Austin & Susan Kolbert ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2010.

Chairman Rose ("Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Austin Kolbert, pro se, for the appellants.

Martha Leamy, assistant assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on the testimony and exhibits offered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2009 the appellants were the assessed owners of a 34.5-acre parcel of landlocked land in Pelham identified on the assessors' Map 6 as Lot 33. For fiscal year 2010, the assessors valued the subject property at \$59,000 and assessed a tax thereon, at the rate of \$18.34 per thousand, in the amount of \$1,082.06. On February 1, 2010, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors, which the assessors denied on February 9, 2010. The appellants seasonably filed an appeal with the Appellate Tax Board ("Board"), which the Board received on May 12, 2010 in an envelope postmarked May 8, 2010.¹ On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The appellants testified that the subject property is a landlocked parcel which is utilized as a wood lot by the original owner. The appellants further testified that there is no access to the property other than over a legal right of way

¹ Where, as here, the Board receives a petition after the three-month due date, the date of postmark is deemed to be the date of filing. G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 & 65. Accordingly, the Presiding Commissioner found and ruled here that the filing date of the petition was deemed to be May 8, 2010 and therefore the appellants' appeal was timely.

and that little use has occurred on the land other than occasional wood cutting or clearing. The appellants argued that similar landlocked parcels of land in Pelham are valued at a lower rate compared to the subject property and that the subject property is more appropriately valued at \$500 per acre, for a total of \$17,250. The appellants presented no evidence concerning these other parcels and presented no exhibits or witnesses other than Mr. Kolbert. The assessors rested on the presumed validity of their assessment.

On the basis of the evidence presented at the hearing, the Presiding Commissioner found that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee.

OPINION

The 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). The appellants have the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner[s] to make out [their] right as

[a] matter of law to [an] 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, taxpayers "'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 offered no evidence of overvaluation beyond mere assertions. The appellants testified that the subject property is a landlocked parcel of land which is used occasionally for wood cutting or clearing and argued that the subject property was overvalued in comparison to other landlocked parcels in Pelham. However, the appellants offered no evidence to support their assertion and to prove that the subject assessment exceeded the fair cash value. Therefore, the Presiding Commissioner found and ruled that the appellants

failed to meet their burden of proving that the subject property was overvalued for fiscal year 2010.

Accordingly, the Presiding Commissioner issued a single-member decision for the appellee.

APPELLATE TAX BOARD

By: _____
James D. Rose, Commissioner

A true copy,

Attest: _____
Clerk of the Board