

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DEEPAK & LATA THATAI

v.

BOARD OF ASSESSORS OF  
THE TOWN OF LEXINGTON

Docket No. F319809

Promulgated:  
May 6, 2015

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 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 Deepak and Lata Thatai ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2013 ("fiscal year at issue").

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Scharaffa, Chmielinski, and Good 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.

*Deepak Thatai, pro se*, for the appellants.

*Robert F. Lent*, Director of Assessing, for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits offered into evidence, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2012, the appellants were the assessed owners of a 1.16-acre parcel of land improved with a single-family residence located at 33 York Street in Lexington ("subject property"). For assessment purposes the subject property is identified on the assessors' map 55 as parcel 26. For the fiscal year at issue, the assessors valued the subject property at \$1,603,000 and assessed a tax thereon, at the rate of \$15.20 per thousand, in the total amount of \$24,365.60. In accordance with G.L. c. 59, § 57C, the appellants timely paid the tax due without incurring interest. On January 29, 2013, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors, which they denied on March 15, 2013. On June 11, 2013, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed an appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property, which is located in the coveted Merriam Hill neighborhood very close to Lexington town center, is improved with a classic Craftsman-style, two-story, single-

family dwelling with a finished living area of 4,060 square feet.<sup>1</sup> The subject dwelling has a total of eighteen rooms, including five bedrooms as well as five full bathrooms. Additional features include: a two-car under garage; two fireplaces; a partially finished walk-out basement which opens to the expansive and manicured back lawn; an open porch; a patio; and a wood deck. The property record card reflects the effective year built as 1996, and the assessors graded the subject property as "B+."

The appellants purchased the subject property for \$1,751,000 on June 29, 2011, approximately six months prior to the relevant assessment date for the fiscal year at issue. Mr. Thatai testified that the appellants had been renting "in the area," when they were notified that they had thirty days to vacate their rental property. His testimony was apparently intended to imply that the appellants were compelled to purchase the subject property. The appellants, however, failed to offer any other evidence to suggest that they were under undue influence or duress to purchase the subject property at a price higher than its fair market value.

The appellants did introduce into evidence a written statement, which contained a listing of two properties in the

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<sup>1</sup> The subject property's property record card recites a finished living area of 5,335 square feet. At the hearing, however, the assessors acknowledged that this was an error and that the correct living area is 4,060 square feet.

"nearby area that looked reasonably comparable" to the subject property with respect to their gross area, living area, year built, and assessment. The appellants did not, however, provide the property record cards for these properties or offer any descriptions of them. Further, the appellants did not analyze the features of the purportedly comparable-assessment properties, compare them to the subject property, and then make adjustments to account for obvious differences between the characteristics of their purportedly comparable-assessment properties and those of the subject property. Finally, the appellants argued that the subject property was overvalued because the property record card included an overstatement of the dwelling's total finished living area and that the subject property's assessed value should have been \$1,300,000.

The assessors presented its case-in-chief through the testimony of Robert Lent, the Director of Assessing for Lexington, and the introduction of several exhibits, including the requisite jurisdictional documentation and a sales-comparison analysis. In his analysis, Mr. Lent relied on four purportedly comparable properties that sold in Lexington in 2011 for prices that ranged from \$1,559,000 to \$1,981,000. Mr. Lent adjusted these sales for differences between these properties' features and those of the subject property. Mr. Lent's analysis

produced an indicated value range for the subject property of \$1,519,000 to \$1,872,000.

On the basis of this evidence, the Board found that the appellants failed to demonstrate that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The Board found that the sale price paid by the appellants six months prior to the relevant assessment date, for more than the assessment at issue, was the best indication of the subject property's fair cash value on January 1, 2012. The appellants failed to offer a credible and definitive analysis establishing that they overpaid for the subject property and, even if so, by how much they might have overpaid. With respect to the appellants' purportedly comparable-assessment properties, the Board found that the appellants did not demonstrate that these properties were sufficiently similar to the subject property and they failed to make any adjustments to account for differences between the subject property and the purportedly comparable assessment properties.

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

#### **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 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).

"The actual sale of the subject property itself is 'very strong evidence of fair market value, for [it] represent[s] what a buyer has been willing to pay to a seller for [the property under appeal].'" **New Boston Garden Corp. v. Board of Assessors of Boston**, 383 Mass. 456, 469 (1981) (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 evidence of compulsion).

In the present appeal, the appellants purchased the subject property approximately six months before the relevant assessment date of January 1, 2012, for \$1,751,000. The Board found and ruled that the record failed to demonstrate duress or compulsion associated with that sale. The Supreme Judicial Court has "given a narrow definition to the 'compulsion' that requires exclusion of evidence of a sale." **The Westwood Group, Inc. v. Assessors of Revere**, 391 Mass. 1012, 1013 (1984) (citing **United-Carr, Inc. v. Cambridge Redevelopment Auth.**, 362 Mass. 597, 600

(1972)). Accordingly, the Board found and ruled here that the price associated with the June 29, 2011 sale fairly represented the value of the subject property on the relevant assessment date.

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

In the present appeal, the appellants offered into evidence the assessment information of two purportedly comparable properties. General Laws c. 58A, § 12B provides, in pertinent part, that "at any hearing relative to the assessed fair cash valuation or classification of property, evidence as to fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible." Thus, evidence of assessed values must relate to properties that are comparable to the subject property, i.e., properties that share "fundamental similarities" with the subject property, including similar age, location, and size. See **Lattuca v. Robsham**, 442 Mass. 205, 216 (2004). Moreover, "without appropriate adjustments . . . the assessed

values of [comparable] properties [do] not provide reliable indicator[s] of the subject's fair cash value." **Lupacchino v. Assessors of Southborough**, Mass. ATB Findings of Fact and Reports 2008-1253, 1269.

In the present appeal, the appellants did not offer into evidence the property record cards for their cited properties nor did they draw any meaningful comparison between the subject property and the purportedly comparable-assessment properties. Further, the appellants did not make adjustments to account for differences between the characteristics of their purportedly comparable-assessment properties and those of the subject property.

In addition, the appellants failed to show that the discrepancy of living area on the subject property's property record card resulted in over valuation. Rather, the June 29, 2011 sale of the subject property and the assessors' comparable-sale analysis demonstrated that the assessment did not exceed the subject property's fair cash value for the fiscal year at issue, despite the mistake on the subject property's property record card.

The appellants have the burden of proving that the subject property had a lower value than that assessed. "'The burden of proof is upon the [appellants] to make out [their] 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)).

On the basis of the evidence of record, 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. Accordingly, the Board issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board