

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CYNTHIA AGUILAR

v.

BOARD OF ASSESSORS OF  
THE TOWN OF WEST TISBURY

Docket No. F350278

Promulgated:  
January 31, 2025

This is an appeal originally filed under the informal procedure pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of West Tisbury ("appellee" or "assessors") to abate taxes on real estate owned by and assessed to Cynthia Aguilar ("appellant") for fiscal year 2023 ("fiscal year at issue").<sup>1</sup>

Commissioner Elliott heard the appeal. Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier joined him in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

*Cynthia Aguilar, pro se*, for the appellant.

*Ellen Hutchinson, Esq.*, for the appellee.

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<sup>1</sup> Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings to the formal procedure. See G.L. c. 58A, § 7A.

## **FINDINGS OF FACT AND REPORT**

Based on testimony and documents admitted into evidence during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2022, the relevant valuation date for the fiscal year at issue, the appellant was the owner of a 1.42-acre parcel of land improved with a single-family home built in 1987 and containing 1,120 square feet of living area with a total of 6 rooms, including 3 bedrooms, as well as 1 full bathroom, located at 119 Oak Lane in the Town of West Tisbury ("subject property").

For the fiscal year at issue, the appellee valued the subject property at \$839,600 and assessed a tax thereon, at a rate of \$4.36 per \$1,000 in the total amount of \$3,757.40, including the applicable Community Preservation Act surcharge. The appellant timely paid the tax without incurring interest. On April 7, 2023, the appellant timely filed an abatement application for the subject property, which the appellee denied on May 16, 2023.<sup>2</sup> On July 28, 2023, the appellant seasonably filed her appeal with the Board. Based on this information, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

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<sup>2</sup> For the fiscal year at issue, the actual tax bill was delayed to the fourth-quarter installment, which was due on May 1, 2023. Therefore, pursuant to G.L. c. 59, § 59, the abatement application, filed before the due date of the first installment of the actual tax bill, was timely.

The appellant presented her case through her testimony and the submission of documents. The appellant testified that, in 2008, she sought to designate the subject property as an affordable-deed-restricted property, which she understood to be a property that would be affordable to a buyer earning no more than 80 percent of the median income for West Tisbury. Pursuant to her plan, a covenant was drafted by an attorney and filed at the Dukes County Registry of Deeds. The appellant submitted into evidence a copy of this covenant as filed at the Dukes County Registry of Deeds.

The appellant further explained that, as of the relevant valuation date, there were 44 affordable-deed-restricted properties in West Tisbury, excluding the subject property. She submitted a listing from a database to demonstrate that, unlike the subject property, these 44 properties were being assessed at their "maximum resale price" as described in their affordable deed restrictions, which is less than their fair cash value. The appellant included with her evidence a copy of a sample affordable deed restriction for one of these 44 affordable-deed-restricted properties ("sample affordable deed restriction").

The appellant contended that the subject property's assessed value for the fiscal year at issue should be its "maximum resale price" using the methodology prescribed in her covenant. The appellant offered into evidence a calculation which purportedly represented this "maximum resale price" using the specifics of the

subject property: a 3-bedroom home in West Tisbury for a 4-person household for the fiscal year at issue. From this evidence, the appellant contended that the "maximum resale price," and fair cash value, of the subject property for the fiscal year at issue was \$285,000.

During cross-examination, the appellant acknowledged that the subject property's covenant was different from the sample affordable deed restriction in certain operative respects. First, for "maximum resale price," the subject property's covenant defined the term as "the lesser of the appraised value of the Property at the time of resale or [blank] and 00/00 [blank] Dollars," as increased by inflation annually. Where the subject property's covenant was blank, this same provision in the sample affordable deed restriction recorded a dollar amount of \$304,800. The appellant testified that the copy of the subject property's covenant in her possession included a dollar amount, but she acknowledged that the document that she placed into evidence before the Board, which is the document that is on file at the Duke's County Registry of Deeds, had a blank space.

The second key difference between the agreements was the restrictions placed upon transfers of their respective properties. In the sample affordable deed restriction, the sale, transfer, disposal, or other conveyance of the property was restricted to the "maximum resale price" as calculated by the affordable housing

authority. The subject property's covenant, while containing this language, included an explicit exception:

except to convey the Property pursuant to an estate plan to members of her immediate family, regardless of their income ***which conveyance shall be free of this restriction...***

(emphasis added). The two documents again diverge with regard to the provision addressing transfers upon death. Here, the sample affordable deed restriction included constraining language that the subject property's covenant did not:

If the Premises will not be the principal residence of such spouse or child/children then, following the Owner's death, said spouse or child/children has the right to affordably lease the Premises within the restrictions and guidelines of Section 6 of this covenant. Said spouse or child/children not residing on the Premises as the principal residence is excluded the right to lease the premises for one month at the market rate value. ... Said spouse or child/children ("Second Generation Owner") must sign a new covenant at the time of transfer to said Second Generation Owner, which new covenant shall provide a similar Transfer Upon Death Clause ***so that the Premises may pass down to the spouse or child/children of the Second Generation Owner upon death and so on through the generations...***

(underline in the original; bold/italics herein added).

With reference to the noted divergencies from the sample affordable deed restriction, the appellee contended that the covenant governing the subject property failed to establish the subject property as an affordable property. First, the lack of a dollar amount in the definition of "maximum resale price" allowed

the resale price for the subject property to be as high as its fair cash value at the time of purchase, and thus not as an affordable property to a lower-income purchaser. Second, and more importantly, where the sample affordable deed restriction clearly noted that the affordability restriction passes "so on through the generations," the subject property's covenant ends once the subject property is conveyed pursuant to the appellant's estate plan to members of her immediate family.

The appellee then called its witness, MacGregor Anderson, the assessor for the Town of West Tisbury. First, Assessor Anderson testified that he believed that the appellant's calculation document, which purported to derive the "maximum resale price" for the subject property, contained several erroneous assumptions, resulting in an artificially lower "maximum resale price." Second, Assessor Anderson opined that the subject property's covenant did not qualify as an affordable deed restriction. Assessor Anderson testified to his understanding that the appellant had, for several years, been trying to reach an agreement with the Duke's County Regional Housing Authority ("DCRHA") whereby the DCRHA would agree to administer an affordable deed restriction for the subject property. The appellee submitted into evidence an email communication from David Vigneault, a representative of the DCRHA

to the appellant.<sup>3</sup> The letter explained that, if the appellant were to agree to an affordable deed restriction "utilizing terms typical of current affordability restrictions," then the DCRHA "will be happy" to serve as an affordability monitor for the subject property. The parties presented no evidence that such an agreement was entered into by the applicant.

Based on the evidence of record, the Board found and ruled that the covenant, which the appellant had prepared and filed by her attorney, and which purported to transform the subject property into an affordable property, was ineffective. The covenant allows the appellant to sell the subject property for a price as high as its fair cash value as of the time of purchase. Additionally, the subject property can pass through the appellant's estate plan, "which conveyance shall be free of this restriction." Therefore, the covenant ends upon the passing of the appellant and does not run "so on through the generations," which the Board found is the hallmark of a valid affordable deed restriction.

The appellant offered no other evidence of the subject property's fair cash value. Therefore, the Board found and ruled that the appellant failed to meet her burden of proving a fair

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<sup>3</sup> The appellant objected to the use of what she deemed to be a private communication not involving the appellee. However, Assessor Anderson explained that this email, originating from Mr. Vigneault's DCRHA email address, was a matter of public record and was validly obtained through a public-records request.

cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee.

### 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 upon which a willing buyer and a willing seller will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). An appellant has the burden of proving that the property has a lower value than that assessed. "The burden of proof is upon the petitioner to make out its 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)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayer[] sustain[s] the burden of proving 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, "[t]he 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.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

To demonstrate that the subject property was overassessed, the appellant submitted a covenant, drafted by an attorney on her behalf and filed with the Dukes County Registry of Deeds, which she purported to designate the subject property as an affordable property. However, because the subject property's covenant differed in crucial respects from the sample affordable deed restriction, the Duke's County Housing Authority refused to accept the subject property as an affordable property. The Board agreed with the appellee that, as written, the subject property's covenant allows the appellant to sell the subject property for as high as its fair cash value as of the date of sale. Further, the covenant terminates once the subject property passes through the appellant's estate to members of her immediate family. The covenant thus fails to ensure that the subject property will remain an affordable property in perpetuity, which is the hallmark of a valid affordable deed restriction.

The appellant presented no other evidence to dispute the fair cash value of the subject property, such as sales or assessments of properties comparable to the subject property. See **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 400; **John Alden Sands v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2007-1098, 1106.

Based on the foregoing, the Board found and ruled that the appellant failed to meet her burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

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

**THE APPELLATE TAX BOARD**

By:   
Mark J. DeFrancisco, Chairman

A true copy,

Attest:   
Clerk of the Board