

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**AMANDA M. ALIX AND
JON R. LAWLESS**

v.

**BOARD OF ASSESSORS OF THE
TOWN OF MONTAGUE**

Docket No. F338025

Promulgated:
September 29, 2021

This is an appeal heard 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 Montague ("assessors" or "appellee") to abate a tax on certain real estate owned by and assessed to Amanda M. Alix and Jon R. Lawless ("appellants") under G.L. c. 59 §§ 11 and 38 for fiscal year 2019 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal and, pursuant to G.L. c. 58A, § 1A and 831 CMR 1.20, issued a single-member 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.

Amanda M. Alix, pro se, for the appellants.

Karen Tonelli, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2018, the relevant valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of a 1.533-acre parcel of land, improved with a two-family duplex, with an address of 55 A & B Randall Road in the Town of Montague ("subject property"). For the fiscal year at issue, the appellee valued the subject property at \$223,700 and assessed a tax thereon, at the rate of \$20.07¹ per \$1,000, in the total amount of \$4,489.66. In accordance with G.L. c. 59, § 57, the appellants timely paid the tax due without incurring interest. On March 11, 2019, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors prior to the due date of the first installment of the semi-annual actual tax bill for the subject property. The assessors denied the appellants' Application for Abatement on April 8, 2019. On May 15, 2019, in accordance with G.L. c. 58A, § 7A, the appellants seasonably filed their Petition Under Informal Procedure with the Appellate Tax Board ("Board").² Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over this appeal.

¹ This rate includes a fire district tax of \$2.94.

² On June 3, 2019, within thirty days of service of the Informal Procedure, the assessors elected to transfer the proceedings to the formal docket.

The subject property's duplex ("subject duplex") was constructed in 1985 and, at all relevant times, was of average construction with carpeted floors and vinyl-covered wood siding. It contained a total of 2,120 square feet of living area and consisted of two units, each with four rooms, including two bedrooms, as well as one full bathroom and one half bathroom. Additionally, the subject duplex had a finished basement. The subject duplex was one of four similarly styled and constructed duplexes on Randall Road that were built contemporaneously with each other, with one adjacent to the subject property and two across the street.

The appellants claimed that the subject property was overvalued for the fiscal year at issue. They presented their case through the testimony of appellant Amanda M. Alix and the submission of documents.

The appellants offered a sales comparison with 54 A & B Randall Road, one of the similar properties across the street from the subject property, which was assessed at \$215,000 for the fiscal year at issue. This property was a 0.8-acre parcel that was improved with a duplex with a wood exterior and containing 2,040 square feet of living area. Like the subject duplex, the purportedly comparable property's two units each had four rooms, including two bedrooms, as well as one full bathroom and one half

bathroom. Unlike the subject duplex, the purportedly comparable property's duplex did not have a finished basement.

Fifty-four A & B Randall Road sold on January 6, 2017, for \$155,000. The appellants submitted a Multiple Listing Service ("MLS") information report detailing that sale. According to the MLS report, this property sold after being on and off the market and undergoing several price reductions. The initial listing date was July 14, 2015, with an asking price of \$219,900. The property spent a total of 448 days on the market prior to receiving an offer and selling for \$155,000. The assessors coded the 2017 sale as "NAL" for non-arm's-length sale, a designation reflected on its property record card. Ms. Alix testified that she had viewed 54 A & B Randall when it had been on the market in 2013, and at that time, the property was in poor condition, with worn-out, stained carpets beyond salvage in both units, holes in the wall, and damaged siding on the back of the building. Ms. Alix further testified that, during the fiscal year at issue, she had spoken with the assessor and with the realtor who had sold 54 A & B Randall Road, and they reported that the property continued to be in poor condition.

On May 15, 2018, after the sale, the new owner of 54 A & B Randall Road was granted a special zoning variance to subdivide the property. He subsequently created a new 0.4-acre, single-family lot with an address of 6 Randall Wood Drive.

Ms. Alix also offered a comparison with the property next door, 57 A & B Randall Road. This property was a 1.533-acre parcel of land improved with a duplex with carpeted floors and wood siding and containing a total of 2,120 square feet of living area. Each of the two units had four rooms, including two bedrooms, as well as one full bathroom and one half bathroom. Like the subject property, the comparable property also had a full finished basement. Ms. Alix testified that 57 A & B Randall Road was placed on the market in May of 2015 with an original asking price of \$225,000; the sellers then dropped the price to \$219,900 in August and further down to \$209,000 in September. Ms. Alix testified that the sellers reported that they received no meaningful offers even after the reductions, so they took the property off the market in November of 2015. The appellants submitted a written statement from the owner of 57 A & B Randall Road corroborating this information.

Ms. Alix testified that, notwithstanding the "NAL" designation, the appellants relied on 54 A & B Randall Road's 2017 sale price of \$155,000 for their analysis. With further consideration of 57 A & B Randall Road, which did not receive a meaningful offer when listed for \$209,000, the appellants' opinion of value for the subject property for the fiscal year at issue was \$164,300.

The appellee presented their case through the testimony of assessor Karen Tonelli, as well as the submission of documents, including the relevant jurisdictional documents. Ms. Tonelli confirmed that the assessors had coded the 2017 sale of 54 A & B Randall Road as "NAL." She testified that the reason for the designation was the poor condition of the property.

Ms. Tonelli presented a sales-comparison analysis comparing the subject property's assessment with the adjusted sale prices of three purportedly comparable properties: 37 Unity Street, 18 Central Street, and 16 Norman Circle. Ms. Tonelli applied adjustments for land size, condition, finished area, room count, detached structures, and the subject property's electric heating system. After her adjustments, Ms. Tonelli arrived at adjusted sale prices ranging from \$178,500 to \$234,700 with 18 Central Street as the low outlier.

The appellants found fault with the appellee's reliance on 16 Norman Circle, the only duplex in their analysis, because it was located almost two miles from the subject property. They disputed its similarity with the subject property, pointing out that 16 Norman Circle benefitted from a neighborhood with higher property values and lighter traffic than the subject property's neighborhood.

Based on the evidence of record, the Presiding Commissioner found that the appellants met their burden of proving that the

subject property was overvalued for the fiscal year at issue. While he did not rely on the 2017 sale of 54 A & B Randall Road, which was coded as "NAL," the Presiding Commissioner looked to the comparable property's assessment at \$215,000 for the fiscal year at issue. The Presiding Commissioner considered the property's poor condition vis-à-vis the subject property but then weighed the added value gained from the property's ability to be subdivided. The Presiding Commissioner further considered the poor market experience and ultimate inability to sell 57 A & B Randall Road for a meaningful price in the months following its price reduction to \$209,000. The Presiding Commissioner found that this evidence in total supported the appellants' contention that the subject property was overvalued.

Based on the record in its entirety, the Presiding Commissioner found and ruled that \$200,000 reflected the fair cash of the subject property for the fiscal year at issue.

Accordingly, the Presiding Commissioner issued a decision for the appellants and thus ordered an abatement of \$475.66.

[This space intentionally left blank.]

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 in a free and open market will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

A taxpayer has the burden of proving that a 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 [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 the 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 this appeal, the appellants presented evidence of overvaluation in the form of a sale of a purportedly comparable property located at 54 A & B Randall Road. The 2017 sale was coded as "NAL," so the Presiding Commissioner looked instead to its assessment for the fiscal year at issue.

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." Such evidence may provide adequate support for the granting of an abatement. *Chouinard v. Assessors of Natick*, Mass. ATB Findings of Fact and Reports 1998-299, 307-08 (citing *Garvey v. Assessors of West Newbury*, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; *Swartz v. Assessors of Tisbury*, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see also *Turner v. Assessors of Natick*, Mass. ATB Findings of Fact and Reports 1998-309, 317-18. Purportedly comparable properties used in a comparable-assessment analysis must be adjusted, just like those used in a comparable-sales analysis, for differences with the subject property. See *Graham v. Assessors of West Tisbury*, Mass. ATB Findings of Fact and Reports 2007-321, 402, *aff'd*, Mass. App. Ct. 1107 (Rule 1:28 Decision).

In considering the assessment for the fiscal year at issue of 54 A & B Randall Road, the Presiding Commissioner weighed that comparable property's inferior condition but also its ability to be subdivided. The Presiding Commissioner found that the property's assessment, with adjustments and with the additional evidence from 57 A & B Randall Road, supported the appellants' contention that the subject property was overvalued for the fiscal year at issue.

Based on the evidence of record, the Presiding Commissioner found and ruled that \$200,000 reflected the fair cash value of the subject property for the fiscal year at issue.

The "[f]air cash value of property cannot be proved with mathematical certainty and must ultimately rest in realm of opinion, estimate, and judgment." **Mountaup Elec. Co. v. Assessors of Whitman**, 390 Mass. 847, 854 (1984), quoting **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of the evidence, and inferences that reasonably may be drawn from the evidence are matters for the board." **General Mills, Inc. v. Commissioner of Revenue**, 440 Mass. 154, 161 (2003).

In sum, the Presiding Commissioner found the testimony and data provided by the appellants to be persuasive evidence of the subject property's overvaluation. Having considered the record in its entirety, the Presiding Commissioner found and ruled that the

subject property's assessed value exceeded its fair cash value for the fiscal year at issue and that the appellants were entitled to an abatement in the amount of \$475.66.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board