

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

BEACHFRONT REALTY TRUST,  
CHERYL L. BOURNE, TRUSTEE

v.

BOARD OF ASSESSORS  
OF THE TOWN OF  
EAST BRIDGEWATER

Docket No. F336359

Promulgated:  
February 25, 2020

This is an appeal 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 East Bridgewater ("assessors" or "appellee") to abate a tax on certain real estate located in East Bridgewater owned by and assessed to Cheryl L. Bourne, Beach Front Realty Trust ("appellant"), for fiscal year 2018 ("fiscal year at issue").

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

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

*Samuel J. Bourne*,<sup>1</sup> *pro se*, for the appellant.

*Matthew J. Thomas*, Esq. for the appellee.

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<sup>1</sup> Samuel J. Bourne is the husband of Cheryl L. Bourne, Trustee of the appellant. He appeared on his wife's behalf pursuant to a power of attorney from her and he demonstrated appropriate familiarity with the subject property.

### FINDINGS OF FACT AND REPORT

On the basis of 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, 2017, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 14,057-square-foot parcel of real estate located at 117 Pond Street ("subject property"). The subject property is improved with a single-family, ranch-style dwelling containing six rooms, including three bedrooms, as well as one bathroom, with a total living area of 1,892 square feet. For assessment and real estate tax purposes, the subject property is identified on the assessors' Map 8 as Lot 32.

For the fiscal year at issue, the assessors valued the subject property at \$259,600 and assessed a tax thereon, at a rate of \$17.96 per thousand, in the amount of \$4,662.42. On January 29, 2018, the appellant timely filed an abatement application with the assessors, which was deemed denied on April 29, 2018. In accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board") on July 10, 2018. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

In support of the appellant's claim that the subject property was overvalued for the fiscal year at issue, the appellant relied on the testimony of Samuel J. Bourne ("Mr. Bourne"), and offered into evidence several exhibits, including: a letter from Cheryl L. Bourne ("Mrs. Bourne"), Trustee, granting power of attorney to Mr. Bourne, her husband, for purposes of this appeal; a copy of a letter written by the East Bridgewater Planning Board ("Planning Board") dated June 30, 2016 and recorded with the Plymouth County Registry of Deeds ("Registry"); and a copy of a legal memorandum prepared by Matthew J. Thomas, Esq. for the assessors with respect to the appellant's abatement application.

The assessors presented their case through the testimony of Paula Wolfe, Director of Assessing, and offered into evidence several exhibits, including: the requisite jurisdictional documentation; the property record card for the subject property; a copy of the March 5, 1951 resolution establishing the Planning Board; and four purportedly comparable sales.

The record revealed that on May 30, 1989, Mary Jane Kenerson conveyed Lot 32 (Parcel A) and Lot 31 to Mr. Bourne and Mrs. Bourne by a deed recorded with the Registry. Lot 32 (Parcel A) and Lot 31 were originally established pursuant to a 1939 subdivision plan. In March 1972, however, the two lots were merged pursuant to a new subdivision plan.

On June 28, 2000, Mr. Bourne and Mrs. Bourne conveyed their merged Lot 32 (Parcel A) and Lot 31 to the appellant. Subsequently, on March 17, 2016, the appellant conveyed Lot 31, as depicted on the 1939 subdivision plan, to Mr. Bourne, Trustee of Lot 31 Realty Trust.

Upon notice of the deed transfer of Lot 31, Roy E. Gardner, Chairman of the Planning Board, mailed to Mr. Bourne and recorded with the Registry a notice that the deed transfer was done without the required filing and Planning Board action. The appellant's main contention in this appeal is that the filing of the notice put a cloud on the title of the subject property and, therefore, adversely affected its fair market value.

However, the appellant failed to offer evidence to quantify the title issue's impact on the subject property's fair market value or the cost to cure the title problem. Notwithstanding the appellant's failures, the assessors nonetheless conceded that a \$10,000 reduction in value was warranted to offset any cloud on or cost to cure the subject property's title. No evidence of record supported a further reduction in the fair cash value of the subject property.

Accordingly, the Presiding Commissioner adopted the assessors' recommendation and reduced the assessed value by \$10,000 to arrive at a fair cash value of the subject property for the fiscal year at issue of \$249,600. He, therefore, decided

this appeal for the appellant and granted abatement in the amount of \$179.60.

#### OPINION

Assessors are required to assess all real property at its full and fair cash value. G.L. c. 59, § 28; *Coomey v. Assessors of Sandwich*, 367 Mass. 836, 837 (1975). 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 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 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, a 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)).

In the present appeal, both parties agreed, and the Presiding Commissioner found that there was a cloud on the title during the relevant time period. The Presiding Commissioner also found that the appellant failed to quantify the effect of the cloud on title or to offer credible evidence of the subject property's fair cash value for the fiscal year at issue. However, at the hearing of this appeal, the assessors conceded that a \$10,000 reduction in value was warranted to offset any potential title issues.

The Board can accept such portions of the evidence as appear to have the more convincing weight. *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 72 (1941). The Board is not required to believe the testimony of any particular witness. *Id.* "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the [B]oard." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

On this basis, the Presiding Commissioner adopted the assessors' recommendation and determined that the subject property's fair cash value for the fiscal year at issue was \$249,600. He, therefore, decided this appeal for the appellant and granted abatement in the amount of \$179.60.

**THE APPELLATE TAX BOARD**

By: James D. Rose  
James D. Rose, Commissioner

A true copy:

Attest: Wm. J. Roberts  
Clerk of the Board