

COMMONWEALTH OF MASSACHUSETTS
APPELLATE TAX BOARD

MARK J. BROOKS

v.

BOARD OF ASSESSORS OF
THE TOWN OF WORTHINGTON

Docket Nos. F329777
F330245

Promulgated:
October 31, 2019

These are appeals 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 Worthington ("assessors" or "appellee") to abate taxes on certain parcels of real estate located in the Town of Worthington, owned by Mark J. Brooks ("appellant") for fiscal year 2016 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard these appeals and issued single-member decisions for the appellee in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20.

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.

Mark J. Brooks, pro se, for the appellant.

John Fossnot, chairman of the assessors, and *Jeff Cranston*, member of the assessors, for the appellee.

FINDINGS OF FACT AND REPORT

Based on all of the evidence, including jurisdictional documents, the Presiding Commissioner made the following findings of fact.

Docket No. F330245 - 148 Lindsay Hill Road

On January 1, 2015, the appellant was the assessed owner of a 10.45-acre parcel of land improved with a single-family home located at 148 Lindsay Hill Road. For the fiscal year at issue, the assessors valued the property at \$226,800 and assessed a tax thereon at a rate of \$16.06 per thousand, in the amount of \$3,642.41. On December 16, 2015, Worthington's Collector of Taxes sent out the town's actual real estate tax bill, which, in accordance with G.L. c. 59, § 57C, was due and payable in two equal installments on February 1, 2016 and May 1, 2016. The appellant paid both installments late, and therefore, incurred interest. On January 31, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on February 23, 2016. In accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board") on May 18, 2016.

At the hearing of this appeal, the assessors filed a motion to dismiss on the grounds that the appellant did not timely pay the tax due without incurring interest, and further failed to

timely pay an amount at least equal to the average tax for the three preceding years.

Based on the evidence presented, the Presiding Commissioner found and ruled that the Board did not have jurisdiction to hear and decide this appeal. Accordingly, the Presiding Commissioner allowed the assessors' motion to dismiss and issued a decision for the appellee.

Docket No. F329777 - Lindsay Hill Road

On January 1, 2015, the appellant was the assessed owner of a 10.6-acre parcel of vacant land located on Lindsay Hill Road. For the fiscal year at issue, the assessors valued the property at \$52,200 and assessed a tax thereon at the rate of \$16.06 per thousand, in the amount of \$838.33. In accordance with G.L. c. 59, § 57C, the appellant paid the tax due without incurring interest. On January 31, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on February 23, 2016. In accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed an appeal with the Board on May 18, 2016. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

On July 16, 2019, the scheduled hearing date, the appellant failed to appear before the Board. Consequently, the assessors

made an oral motion to dismiss for lack of prosecution. On July 18, 2019, the Presiding Commissioner allowed the assessors' motion to dismiss and, therefore, entered a decision for the appellee.

OPINION

Generally, a taxpayer aggrieved by the assessors' refusal to abate a tax on real property may file an appeal with the Board, provided that

if the tax due for the full fiscal year on a parcel of real estate is more than \$3,000¹, said **tax shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges on any part of said tax** pursuant to section fifty-seven of chapter fifty-nine of the General Laws.

G.L. c. 59, § 64 (emphasis added). The tax on 148 Lindsay Hill Road exceeded the \$3,000 threshold and was not paid without incurring interest. Alternatively, the Board has jurisdiction over an appeal if a taxpayer timely pays an amount that is at least equal to the average tax for the three preceding years. *Id.*; see also *Massachusetts Inst. of Tech. v. Assessors of Cambridge*, 422 Mass. 447, 450 (1996). The appellant did not make any timely payments and therefore failed to satisfy the

¹ By St. 2016, c. 218, § 149, effective November 7, 2016, § 64 was amended by increasing the minimum tax threshold from \$3,000 to \$5,000. Because the due dates for the tax payments at issue preceded November 7, 2016, this amendment was not effective for this appeal.

requirements of the three-year average provision of §§ 64 and 65.

"The Board is a creature of statute and, therefore has no jurisdiction to entertain any proceeding for relief other than in a manner prescribed by statute." *Pepperell Power Assoc. v. Assessors of Pepperell*, Mass. ATB Findings of Fact and Reports 1996-503, 507. "Adherence to the statutory prerequisites is essential to prosecution of appeal from refusals to abate taxes.'" *Id.* (quoting *New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth*, 368 Mass. 745, 747 (1975)). Given that the appellant failed to satisfy the statutory prerequisites for filing an appeal, the Board is deprived of jurisdiction to hear and decide his appeal. See also *Columbia Pontiac Co. v. Assessors of Boston*, 395 Mass. 1010, 1011 (1985); *Fillipone v. Assessors of Newton*, Mass. ATB Findings of Fact and Reports 1995-216.

On this basis, the Presiding Commissioner found and ruled that the Board did not have jurisdiction to hear and decide Docket No. F330245.

In addition, the appellant failed to appear on the scheduled hearing date and the assessors' made an oral motion to dismiss the appellant's appeal of Docket No. F329777 for lack of prosecution. The appellant was aware of the scheduled hearing date, having informed the Clerk of the Board in the days

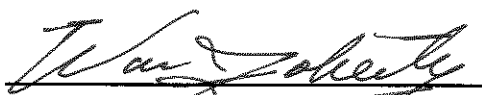
preceding the hearing date that he would not appear. Based on the appellant's failure to appear, and in accordance with Rules 1.16(5) and 1.19(7) of the Board's Rules of Practice and Procedure, which provide in pertinent part that "if any party fails to appear at the time set for hearing, the Board may proceed ex parte," the Presiding Commissioner allowed the assessors' motion to dismiss for lack of prosecution.

Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: 
Steven G. Elliott, Commissioner

A true copy,

Attest: 
Clerk of the Board