COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

CAROLINE'S WAY TRUST, FRED & CAROLINE SCHERNECKER, TRUSTEES v. BOARD OF ASSESSORS OF THE TOWN OF MATTAPOISETT

Docket Nos. F337944, F341502, F342617

Promulgated:
December 27, 2022

These are appeals originally filed under the informal procedure pursuant to G.L. c. 58A, § 7A¹ and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Mattapoisett ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Mattapoisett owned by and assessed to Caroline's Way Trust, Fred & Caroline Schernecker, Trustees ("appellant") for fiscal years 2019, 2020, and 2021 ("fiscal years at issue").

Commissioner Elliott heard these appeals and was joined in the decisions for the appellant by Chairman DeFrancisco and Commissioners Good and Metzer.

These findings of fact and report are promulgated pursuant to requests by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32, for each of the fiscal years at issue.

David J. Rasnick, Esq. for the appellant.

 $^{^1}$ Within thirty days of service of the Statements Under Informal Procedure, the assessors elected to transfer the proceedings to the formal docket. See G.L. c. 58A, \S 7A.

Matthew Thomas, Esq. and Kathleen Costello, administrator of assessing, for the appellee.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction

On January 1, 2018, January 1, 2019, and January 1, 2020, the respective dates of valuation and assessment for each of the fiscal years at issue, the appellant was the assessed owner of real property located at 0 Goodspeed Island in the Town of Mattapoisett ("subject property"). The subject property consists of a 1.15-acre, L-shaped, unimproved parcel of residentially zoned land with 102 feet of frontage on Mattapoisett Harbor and approximately 270 feet of frontage on Caroline's Way. The subject property is bound by numerous easements, as well as numerous restrictions, including a building height restriction of thirty-five feet.

The subject property was subdivided from what was a combined 4.15-acre parcel of land known as 1 Goodspeed Island, improved by a 3,536-square-foot Colonial dwelling and a three-bay, detached garage/carriage house with a 1,083-square-foot, three-room apartment located above. Prior to the subdivision, the two parcels were marketed as a single entity and sold for \$2,700,000 on June 8, 2016, with the subject property assigned a value of \$650,000

and the dwelling, detached garage/carriage house, and 3.0-acre lot assigned a value of \$2,050,000. For fiscal year 2018 and through the fiscal years at issue, the subject property was assessed separately from 1 Goodspeed Island.

II. Jurisdiction

The following chart details the jurisdictional information for these appeals, with assessment amounts inclusive of the Community Preservation Act ("CPA") surcharge:

Docket No.	F337944	F341502	F342617
Fiscal year	FY2019	FY2020	FY2021
Assessed value	\$1,733,400.00	\$1,733,328.00	\$1,817,538.00
Tax rate	\$13.21	\$13.49	\$12.96
CPA rate	1.00 percent	1.00 percent	1.00 percent
Assessment	\$23,113.99	\$23,602.93	\$23,777.89
Assessment	Yes	Yes	Yes
paid w/o			
interest			
Abatement	01/15/19	01/23/20	01/27/21
application			
Denial	04/05/19	02/18/20	03/23/21
Petition	05/02/19	03/03/20	04/09/21

Based upon the above, the Board found and ruled that it had jurisdiction to hear and decide the appeal for each of the fiscal years at issue.

III. The appellant's case

The appellant presented its case through documentary evidence and testimony, including the testimony and appraisal report of John G. Pacheco, a certified residential real estate appraiser ("appellant's appraiser"), as well as numerous deeds and the

responses by the assessors to the appellant's interrogatories and request for production of documents.

The appellant contended at the abatement stage and in its petition that the fair cash value of the subject property should be \$650,000, the amount allocated to the subject property in the 2016 sale. This was contradicted by the appellant's appraiser, who concluded that the subject property's fair cash value was \$925,000 as of January 1, 2018, \$1,100,750 as of January 1, 2019, and \$1,128,269 as of January 1, 2020. To arrive at these figures, the appellant's appraiser derived his fiscal year 2019 value based on two sales of waterfront lots in Mattapoisett, a 1.17-acre lot adjacent to the subject property that sold for \$950,000 in 2017 and a 1.91-acre lot in an inferior location that sold for \$825,000 in 2019. He then applied a change in market conditions - using average sale prices according to multiple listing service data of approximately 20 percent to calculate his value for fiscal year 2020 and then an additional approximately 2.5 percent to calculate his value for fiscal year 2021.

IV. The appellee's case

In addition to submitting the jurisdictional documents, the assessors engaged in cross-examination of the appellant's witnesses, attempting to cast doubt on the sale of the adjacent lot relied upon by the appellant's appraiser. The assessors had

coded the sale as a non-arm's-length sale because it was the result of litigation between the seller and abutters. The assessors also introduced sales data to justify the assessed values of the subject property for the fiscal years at issue.

V. The Board's findings

The Board found that the evidence - particularly testimony by the appellant's appraiser, the deeds detailing the limitations placed upon the subject property by easements and restrictions, sales data presented, and various tables that had been produced by the assessors in their responses to interrogatories and request for production of documents - supported fair cash values lower than the assessed values of the subject property for the fiscal years at issue.

For fiscal year 2019, the Board determined a fair cash value of \$1,100,000. The Board found the appellant's appraiser's conclusion of an approximately 20 percent increase in value between fiscal year 2019 and fiscal year 2020 to be reasonable, and so the Board determined a fair cash value of \$1,320,000 for fiscal year 2020. For fiscal year 2021, the Board found the assessors' approximately 5 percent increase in value between fiscal years 2020 and 2021 to be reasonable, and so the Board determined a fair cash value of \$1,390,000 for fiscal year 2021.

The following chart summarizes the Board's findings of fair cash values and consequent abatements for the subject property for the fiscal years at issue, inclusive of the CPA surcharge:

Docket No.	F337944	F341502	F342617
Fiscal year	FY2019	FY2020	FY2021
Assessed	\$1,733,400.00	\$1,733,328.00	\$1,817,538.00
value			
Fair cash	\$1,100,000.00	\$1,320,000.00	\$1,390,000.00
value per			
Board			
Overvaluation	\$633,400.00	\$413,328.00	\$427,538.00
Tax rate	\$13.21	\$13.49	\$12.96
CPA rate	1.00 percent	1.00 percent	1.00 percent
Tax abatement	\$8,450.89	\$5,631.55	\$5,596.30

Accordingly, the Board issued decisions for the appellant for the fiscal years at issue.

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 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).

A taxpayer has the burden of proving that the property at issue 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 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 the 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 appeals, the Board found that the evidence — especially testimony by the appellant's appraiser, the deeds detailing the limitations placed upon the subject property by easements and restrictions, sales data presented, and various tables produced by the assessors in their responses to interrogatories and request for production of documents — supported fair cash values lower than the assessed values of the subject property for the fiscal years at issue. See Cummington School of Arts, Inc. v. Assessors of Cummington, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."); Bodwell Extension, LLC v. Assessors of Avon,

Mass. ATB Findings of Fact and Reports 2007-1257, 1267 ("[T]he Board is not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert may suggest, but can accept those portions of the evidence which the Board determines have the more convincing weight.") (citations omitted).

Based upon the above and the evidence of record, the Board found and ruled that the subject property's fair cash values for the fiscal years at issue were lower than the assessed values. Accordingly, the Board issued decisions for the appellant and granted abatements as follows, inclusive of the CPA surcharge:

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Fiscal year	FY2019	FY2020	FY2021
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THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco

Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/ William J. Doherty

Clerk of the Board