

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MARUSYA CHAVCHAVADZE

v. BOARD OF ASSESSORS OF
THE TOWN OF WELLFLEET

Docket No. F337332

Promulgated:
July 2, 2020

This is an appeal 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 Wellfleet ("appellee" or the "assessors") to abate a tax on certain real estate in Wellfleet owned by and assessed to Marusya Chavchavadze ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Commissioner Elliott heard this appeal. Chairman Hammond and Commissioners Rose, Good, and Metzger 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 1.32.

Bruce A. Bierhans, Esq. for the appellant.

Nancy Vail, Town Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2018, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a parcel of real estate located at 220 Aaron Rich Road in Wellfleet. The parcel contains approximately 1.160 acres of land and is improved with a 1.75-story, Cape Cod-style, single-family dwelling constructed in 2004. The dwelling contains approximately 3,023 square feet of living area above grade and approximately 1,986 square feet in the basement level. There are seven rooms, including three bedrooms, as well as three full bathrooms. The subject property's amenities include a fireplace, an outdoor shower, a covered front porch, and two wood decks. All the subject property's improvements are in good condition.

The subject property's lot is surrounded on three sides by conservation land and is one of only three developed lots on the street. A significant portion of the contiguous conservation land had been owned by the appellant's family and was sold, below market, to the town to preserve the area and its wildlife, particularly the Diamondback terrapin, a threatened marine turtle. The assessors valued the subject property at \$884,800 for the

fiscal year at issue and assessed a tax thereon, at the rate of \$7.73 per thousand, in the amount of \$6,839.50.¹

On October 17, 2018, Wellfleet's Collector of Taxes sent notice of the amount of real estate tax due to the appellant. In accordance with G.L. c. 59, § 57, the appellant timely paid the tax due without incurring interest. In accordance with G.L. c. 59, § 59, the appellant timely filed her abatement application with the assessors on November 16, 2018, which the assessors denied on December 14, 2018. On March 12, 2019, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed her appeal with the Appellate Tax Board ("Board"). Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant was the sole witness to testify on her behalf. In addition to her testimony, she introduced two exhibits into the record: (1) a memorandum in support of her request for an abatement with attachments; and (2) a written statement describing the appellant and her sister's below-market sale of eight acres of abutting land to the town for conservation purposes. The exhibits attached to the memorandum include: (a) an assessors' map of the area;

¹ This amount does not include the appellant's residential-exemption reduction of \$832.56, or the town's Community Preservation Act charge of \$205.19.

(b) a spreadsheet showing the subject property's and several purportedly comparable properties' land assessments from fiscal year 2015 through fiscal year 2019; (c) property record cards for the subject property and three purportedly comparable properties for fiscal years 2015 through 2019; and a town meeting article describing the below-market sale, for conservation purposes, of a portion of land belonging to the appellant and her sister, as well as other property owners' land.

In defense of the assessment, the assessors called their town assessor to testify. They also introduced the requisite jurisdictional documents and a sales-comparison grid prepared by the town assessor.

In her application for abatement, petition to this Board, and at the hearing of this appeal, the appellant consistently contended that the subject property was overvalued because the assessors had increased the land portion of the subject property's assessment by over \$90,000 since fiscal year 2015, while decreasing the land portion of her three neighbors' real estate assessments by \$18,560, \$62,700, and \$64,200, respectively, as well as the land assessments of properties on an adjacent street. Taking into consideration her land assessment increase and the land assessment decrease of what she considered to be

the most comparable neighboring property into consideration, the appellant placed the fair cash value of the subject property at \$731,400, by reducing the subject property's land assessment of \$303,700 to \$150,300. The appellant calculated her \$153,400 reduction in the subject property's land assessment by subtracting its land-assessment increase since fiscal year 2015 of \$90,700 coupled with the \$62,700 decrease in what she considered to be the most comparable neighboring property's land assessment. The appellant also maintained that her below-market sale to the town of valuable development property for conservation and preservation purposes had ironically led to the assessors overvaluing the land portion of the subject property.

The town assessor defended the assessment with a sales-comparison grid containing four purportedly comparable properties with sale prices ranging from \$806,438 to \$900,000. She selected these properties because of their locations ostensibly similar to the subject property's. The town assessor made two adjustments to each of these properties' sale prices: one for land and a second for improvements resulting in adjusted sale prices that ranged from \$901,000 to \$1,021,438, well above the subject property's \$884,800 assessment.

Based on all the evidence, the Board found that the appellant failed to meet her burden of proving that the subject property was overvalued. More specifically, the Board found that she failed to establish the comparability of her purportedly comparable-assessment properties and neglected to adjust for, or even consider, obvious differences between the subject property and her purportedly comparable-assessment properties due to basic elements such as size, topography, views, privacy, frontage, and improvements. Moreover, she neglected to address the ultimate issue -- whether the subject properties' overall assessment exceeded its fair cash value, focusing only on the value of the land component of the subject property's assessment.

For these reasons, the Board found and ruled that the appellant failed to meet her burden of proving that the subject property's assessment for the fiscal year at issue exceeded its fair cash value. Accordingly, the Board issued a decision for the appellee.

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 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).

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[] . . . [sustains] 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, 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 instant appeal, the appellant presented purportedly comparable-assessment data to prove that the subject property was overvalued.

"At any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible."

G.L. c. 58A, § 12B. "The admissibility under G.L. c. 58A, § 12B, of evidence of assessments imposed on other property claimed to be comparable in nature to the subject property is largely a matter within the discretion of the board."

Assessors of Lynnfield v. New England Oyster House, Inc., 362 Mass. 696, 703 (1972). The properties used in a comparable-assessment analysis must be comparable to the subject property in order to be probative of the fair cash value. See *id.*

"The assessments in a comparable-assessment analysis, like the sale prices in a comparable sales analysis, must . . . be adjusted to account for differences with the subject. See *Heitin v. Assessors of Sharon*, Mass. ATB Findings of Fact and Reports 2002-323, 334 ('[T]he appellant did not adjust for differences between the

comparable properties and the subject property in order to properly impute a value to the subject property using the assessed values of the comparables.')." **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 396-397, *aff'd* 73 Mass. App. Ct. 1107 (2008).

In the instant appeal, the Board found that, although the appellant's purportedly comparable-assessment properties were admissible, the appellant failed to establish their comparability to the subject property and neglected to adjust for or even consider obvious differences between the subject property and her purportedly comparable-assessment properties, taking into account basic elements such as size, topography, views, privacy, frontage, and improvements.

The appellant's failure to make important adjustments to the data upon which she relied for differences between her purportedly comparable-assessment properties and the subject property rendered her valuation conclusions unreliable. See **Antonino v. Assessors of Shutesbury**, Mass. ATB Findings of Fact and Reports 2008-54, 70 ("[R]eliance on unadjusted assessments of assertedly comparable properties . . . was insufficient to justify a value lower than that [assessed]").

Moreover, a taxpayer "does not conclusively establish a right to abatement merely by showing that his land or building is overvalued. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'"

Hinds v. Assessors of Manchester-by-the-Sea, Mass. ATB Findings of Fact and Reports 2006-771, 778 (quoting **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 317 (1941). In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Buckley v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-110, 119; **Jernegan v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-39, 49. In the instant appeal, the appellant neglected to address the ultimate issue of whether the subject property's overall assessment exceeded its fair cash value, focusing only on the value of the land.

Based on its findings and the application of the foregoing legal principles, the Board found and ruled that the appellant failed to meet her burden of proving that her property was overvalued for the fiscal year at issue. The Board, therefore, decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy,

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