**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**PETER S. COOPER v. BOARD OF ASSESSORS OF**

**THE TOWN OF BEDFORD**

Docket No. F329596 Promulgated:

December 21, 2018

This is an appeal 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 Bedford (“assessors” or “appellee”) to abate a tax on real estate located in Bedford, owned by and assessed to Peter S. Cooper (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

Commissioner Good (“Presiding Commissioner”) heard the appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member 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.

*Peter S. Cooper*, *pro se*, for the appellant.

*Alan Ferguson*, assessing director, for the appellee.

**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, 2015, the appellant was the assessed owner of a 0.17-acre parcel of land improved with a single-family dwelling located at 55 Loomis Street in Bedford (“subject property”). For the fiscal year at issue, the assessors valued the subject property at $358,296, and assessed a tax thereon at the rate of $15.28 per thousand, in the total amount of $5,593.16, inclusive of a Community Preservation Act surcharge. In accordance with G.L. c. 59, § 57C, the appellant timely paid the tax due without incurring interest.

On January 29, 2016, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on February 10, 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 10, 2016. 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 his claim that the subject property was overvalued for the fiscal year at issue, the appellant offered into evidence several documents, including the subject property’s property record card, an appraisal report, and a market analysis prepared by a local realtor. Neither the appraiser nor the realtor testified. The appraisal report had an effective date of December 28, 2013 and relied on four properties that sold between November 26, 2012 and June 28, 2013, between eighteen and twenty-five months prior to the relevant valuation date of January 1, 2015, with sales prices that ranged from $310,000 to $335,000. The properties ranged in size from 7,000 square feet to 30,012 square feet with finished living areas ranging from 1,124 square feet to 1,671 square feet. The appraisal report failed to include copies of deeds substantiating the sales, and contained erroneous information regarding, among other things, the subject property’s finished living area, which the report listed as 1,246 square feet when, in fact, it has only 756 square feet.

The market analysis cited three properties that sold during calendar year 2015 with finished living areas that ranged from 982 square feet to 1,644 square feet with sale prices that ranged from $340,000 to $379,000. This analysis did not, however, include any other comparative information such as lot size or condition of the structure. The appellant maintained that these properties were purchased as tear-downs and, therefore, he argued, the builders paid in excess of the properties’ actual fair market values. The appellant further testified that due to recent zoning changes, the subject property would require a variance to increase the size of the subject dwelling, which, he opined, would be difficult to obtain. The appellant did not provide any evidence to substantiate either of these claims.

For their part, the assessors relied on the testimony of Alan Ferguson, assessing director, and the submission of the requisite jurisdictional documents, as well as the subject property’s property record card. Mr. Ferguson testified that the subject dwelling is rated as being in poor condition, the lowest possible condition afforded by the assessors, and was valued at only $60,600. Mr. Ferguson also testified that there are 3,466 single-family residences in Bedford, and only 166 are valued less than $400,000, with the subject property, valued at $358,296, being one of the lowest valued properties in Bedford.

On the basis of the evidence presented, the Presiding Commissioner found that the appellant failed to prove that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The Presiding Commissioner found that the opinions of value contained in both the appraisal report and market analysis were of no evidentiary value because neither the appraiser nor the realtor who prepared them testified at the hearing, and they were therefore not available for cross-examination or for questioning by the Presiding Commissioner. Moreover, even if the Presiding Commissioner had accepted the opinions of value in the appraisal report and market analysis, the sales upon which those opinions were premised were not substantiated. In addition, with respect to the market analysis, there were no adjustments to account for differences between the purportedly comparable properties and the subject property, and the appraisal report was prepared as of December 2013 and was based on sales consummated long before the relevant January 1, 2015 valuation and assessment date here without an adjustment for time.

The Presiding Commissioner further found that although the subject property is relatively small and the dwelling is in poor condition, it is nonetheless habitable and located in a town where less than 5% of single-family properties are valued or sell for less than $400,000. The Presiding Commissioner found that the assessors adequately considered the subject property’s poor condition by valuing it among the lowest valued properties in the town at $358,296.

Accordingly, based on all the evidence, the Presiding Commissioner issued a decision for the appellee in this appeal.

**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 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 [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[] . . . prov[es] 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, the Presiding Commissioner found that the opinions of value contained in both the appraisal report and market analysis were of no evidentiary value because neither the appraiser nor the realtor who prepared them testified at the hearing, and they were therefore not available for cross-examination or for questioning by the Presiding Commissioner. ***Ward Brothers Realty Trust v. Assessors of Hingham***, Mass. ATB Findings of Fact and Reports 2012-515, 525 (rejecting opinion of value contained in an appraisal report as hearsay where author of the report did not testify at hearing). The Presiding Commissioner further found that the sales upon which the opinion in the appraisal were premised were not substantiated and the sales contained in the market analysis did not contain adjustments for differences between the purportedly comparable properties and the subject property.

The Presiding Commissioner found that the assessors adequately considered the subject property’s deficiencies when valuing it among the lowest valued properties in the town at $358,296. Accordingly, based on all the evidence, the Presiding Commissioner issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

**By: \_\_\_\_ \_\_\_\_\_\_**

**Patricia M. Good, Commissioner**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Clerk of the Board**