COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOHN & BARBARA COYLE	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF KINGSTON**

Docket Nos. F335295 & F338033

Promulgated: May 20, 2020

These are appeals filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 and G.L. c. 58A, §§ 7, from the refusal of the Board of Assessors of the Town of Kingston ("appellee" or "assessors") to abate a tax on real estate located in the Town of Kingston, owned by and assessed to John and Barbara Coyle ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal years 2018 and 2019 ("fiscal years at issue").

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

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

Barbara Coyle, pro se, for the appellants.

Meredith Rafiki, assistant assessor, 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 Presiding Commissioner made the following findings of fact.

On January 1, 2017 and January 1, 2018, the relevant dates of valuation for the fiscal years at issue, the appellants were the assessed owners of a 1.49-acre parcel of land improved with a dwelling located at 17 Brentwood Road in Kingston ("subject property"). For fiscal year 2018, the assessors valued the subject property at $388,200, and assessed a tax thereon, at the rate of $16.50 per thousand, in the total amount of $6,433.30, inclusive of a Community Preservation Act surcharge.

On January 11, 2018, the appellants timely filed an Application for Abatement with the assessors. The Application for Abatement was denied by vote of the assessors on February 27, 2018. The appellants timely filed their appeal for fiscal year 2018 with the Appellate Tax Board ("Board") on May 21, 2018. Based on the foregoing, the Presiding Commissioner found that the Board had jurisdiction to hear the fiscal year 2018 appeal.

For fiscal year 2019, the assessors valued the subject property at $416,000, and assessed a tax thereon, at the rate of $16.46 per thousand, in the total amount of $6,899.37, inclusive of a Community Preservation Act Surcharge.

On January 29, 2019, the appellants timely filed an Application for Abatement with the assessors, which was deemed denied on April 29, 2019.[1] The appellants timely filed their appeal with the Board on June 26, 2019, and based on the foregoing facts, the Presiding Commissioner found that the Board had jurisdiction to hear the fiscal year 2019 appeal.

The subject property is improved with a single-family, raised ranch-style dwelling ("subject dwelling"). Built in 1978, the subject dwelling has three bedrooms and two bathrooms, with a total finished living area of 1,184 square feet. Additional features include central air conditioning, a fireplace, a deck, and a shed. There is also a detached two-car garage, which was the crux of these appeals.

The record showed that in 2016, the assessors conducted a field inspection of the subject property. During the inspection, it was noted that there was not a loft over the two-car garage, as had been indicated on the subject property's property record card. The appellants then contacted the assessors about remedying the error. The record showed that the parties entered into an Agreement for Settlement in February of 2017, reducing the subject property's fiscal year 2017 assessed value from $388,000 to $387,200, or a

[1] Although the assessors' denial notice indicated that the deemed denial occurred on May 7, 2019, by operation of law it was deemed denied by the assessors' inaction on April 29, 2019 pursuant to G.L. c. 58A, § 6 and G.L. c. 59, § 64.

reduction of $800.00 in taxable value, with a corresponding abatement of $13.20 in tax.

Consistent with the correction made by the assessors for the fiscal year 2017, the subject property's property record cards for the fiscal years at issue reflected that the garage did not have a loft, and a loft was not factored into the assessed value of the subject property for either of the fiscal years at issue.

The appellants did not present affirmative evidence of the subject property's market value in making their argument for abatement. Rather, they contended that because the subject property had been reflected as having a loft over the garage for many years, erroneously adding approximately $800.00 in value to the subject property's assessed value, they should receive abatements of tax until they had recouped the entire $800.00 of added value.

The assessors for their part submitted the requisite jurisdictional documents, and otherwise rested on the assessed values.

On the basis of the record in its entirety, the Presiding Commissioner found that the appellants failed to meet their burden of proving that the assessed value of the subject property exceeded its fair market value for either of the fiscal years at issue. Although the record showed that the subject property's property record card had contained an error prior to the fiscal years at

issue, the record likewise showed that the assessors had corrected the error and abated the corresponding tax amount. As such, there was no error on the subject property's property record cards for either of the fiscal years at issue that warranted a reduction in its assessed value for the fiscal years at issue.

Therefore, and as discussed more fully in the Opinion below, the Presiding Commissioner found that the appellants failed to establish their entitlement to an abatement. Accordingly, she issued decisions for the appellee in these appeals.

OPINION

The assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value, also referred to as fair market 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 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)). An assessment is presumed to be valid unless the taxpayer is able to sustain its burden of proving otherwise. ***Schlaiker***, 365 Mass. at 245.

A taxpayer does not conclusively establish a right to an 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, 316 (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. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment 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.

The fair cash value of property may be determined by recent sales of comparable properties in the market. Actual sales generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 682 (1982); ***New Boston Garden Corp. v. Assessors of Boston***,

383 Mass. 456, 469 (1981); ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971). Additionally, evidence of the assessed values of comparable properties may provide probative evidence of fair cash value. *See* G.L. c. 58A, § 12B; ***John Alden Sands v. Assessors of Bourne***, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-308).

In the present appeals, the Presiding Commissioner found the appellants' evidence to be lacking. The evidence showed that while there had previously been an error on the subject property's property record card, the error had been corrected and was not a factor in the subject property's assessed value for either of the fiscal years at issue.

Further, the appellants offered no affirmative evidence of the subject property's market value, such as evidence of recent, comparable sales or evidence of the assessed values of similar, nearby properties. As the appellants failed to offer evidence demonstrating that the subject property's assessed value exceeded its fair market value for either of the fiscal years at issue, the Presiding Commissioner found that they failed to meet their burden of proof.

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

THE APPELLATE TAX BOARD

By: */S/ Patricia M. Good*
Patricia M. Good, Commissioner

A true copy

Attest: */S/ William J. Doherty*
Clerk of the Board