

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**CAROLEE KELLEY DAWE**

**v.**

**BOARD OF ASSESSORS OF  
THE TOWN OF NORWELL**

Docket Nos. F337766  
F339897  
F342331

Promulgated:  
July 28, 2023

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 Norwell ("appellee" or "assessors") to abate taxes on real estate owned by and assessed to Carolee Kelley Dawe ("appellant") for fiscal years 2019, 2020, and 2021 ("fiscal years at issue").

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

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.

*Carolee Kelley Dawe, pro se*, for the appellant.

*Robert W. Galvin, Esq.*, for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on testimony and documentary evidence submitted by the parties during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2018, January 1, 2019, and January 1, 2020, the appellant was the assessed owner of a 1.34-acre, improved parcel of land located at 93 Gerard Road in the Town of Norwell ("subject property").

For fiscal year 2019, the assessors valued the subject property at \$1,013,900 and assessed a tax thereon, at the rate of \$16.40 per \$1,000, in the total amount of \$17,077.60, inclusive of the Community Preservation Act ("CPA") surcharge. The appellant timely paid the tax assessed without incurring interest. On January 31, 2019, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors. By notice dated February 14, 2019, the assessors informed the appellant that they intended to take no action on her abatement application, effectively denying it. On May 10, 2019, the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2019.

For fiscal year 2020, the assessors valued the subject property at \$1,024,400 and assessed a tax thereon, at the rate of \$16.63 per \$1,000, in the total amount of \$17,496.95, inclusive of

the CPA surcharge. The appellant timely paid the tax assessed without incurring interest. On January 29, 2020, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on February 24, 2020. On May 16, 2020,<sup>1</sup> the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the appeal for fiscal year 2020.

For fiscal year 2021, the assessors valued the subject property at \$919,700 and assessed a tax thereon, at the rate of \$16.94 per \$1,000, in the total amount of \$15,996.29, inclusive of the CPA surcharge. The appellant timely paid the tax assessed without incurring interest. On January 28, 2021, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on February 9, 2021. On May 10, 2021, the appellant seasonably filed an appeal with the Board.<sup>2</sup> Based on these facts, the Board found and ruled

---

<sup>1</sup> The appellant's petition was stamped as received by the Board on May 26, 2020, but the petition was mailed in an envelope postmarked May 16, 2020. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

<sup>2</sup> The appellant's petition was stamped as received by the Board on May 11, 2021, but the petition was mailed in an envelope postmarked May 10, 2021. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing. Taxpayers generally have three months from the date of the assessors' action or inaction on an abatement application to file a petition with the Board. See G.L. c. 59, §§ 64, 65. However, when the last day of a filing period falls on a Sunday or holiday, the due date is extended by operation of law to the following business day. See G.L. c. 4, § 9. Accordingly, the appellant's last day for filing her petition with the Board was Monday, May 10, 2021.

that it had jurisdiction to hear and decide the appeal for fiscal year 2021.

The subject property is improved with a single-family, split-level dwelling that was constructed in 1985 and renovated in 2005 to add an addition ("subject home"). The subject home contains a total of 3,293 square feet of living area comprised of ten rooms, including four bedrooms, as well as four full bathrooms. Other amenities include an attached two-car garage with finished attic space. The Board previously issued a decision for fiscal year 2018 finding that the fair cash value of the subject property was \$930,000. For the fiscal years at issue, the subject property was assessed for more than the fair cash value as found by the Board for fiscal year 2018. Pursuant to G.L. c. 58A, § 12A, for fiscal years 2019 and 2020, the "next two fiscal years after a fiscal year for which the Board has determined the fair cash value" of the subject property, the burden shifted to the assessors to prove that an increase in value from the fiscal year 2018 value was justified. For fiscal year 2021, the burden returned to the appellant to prove that the subject property was assessed for more than its fair cash value, the usual legal standard in Board proceedings. See Opinion, *infra*.

As the appellee had the burden of proof for two of the three fiscal years at issue, the appellee presented its case first, calling its witness, Assessor Meredith Rafiki ("Assessor"). The

Assessor explained that she began her position with the town in February 2021, so she was not involved in preparing the original property record cards for the subject property for the fiscal years at issue. The Assessor testified that, upon the appellant filing her application for abatement with the assessors for fiscal year 2021, she examined the property record cards for the subject property for the fiscal years at issue. Based on conversations with the appellant and the Assessor's own inspection of the subject property, the Assessor acknowledged that errors had been made on these property record cards resulting in inaccurate valuations for the subject property for the fiscal years at issue. The most significant error, the Assessor explained, was that the subject home's addition was characterized as a separate dwelling.

The Assessor submitted a copy of the corrected property record card for the subject property for fiscal year 2022. She testified that, on this corrected property record card, the subject home is characterized as a split-level dwelling with an addition and extra fixtures, thus valuing the subject home as one dwelling rather than two. The Assessor made additional corrections as well. She changed the depreciation code from average to good, explaining that the subject home had several good-quality improvements, including stone countertops in the kitchen and built-in storage items throughout, and that the subject home was well maintained. She also coded the living space above the garage as FUS, Finished

Upper Story, rather than its previous coding as FAS, Finished Attic Space. Explaining that the area is fully finished with heating and air conditioning, and that it had a full bath and a full kitchen, the Assessor opined that the FUS coding recognized the full functionality of this space. Finally, the Assessor corrected various errors in the property record card, including square-foot calculations and bedroom and bathroom counts.

The Assessor then determined a proposed fair cash value for the subject property for each fiscal year at issue, calculating what the subject property's assessed value should have been based on the corrections that she made to the fiscal year 2022 property record card. The Assessor's proposed fair cash values for the subject property for the fiscal years at issue were as follows: \$774,600 for fiscal year 2019; \$788,100 for fiscal year 2020; and \$774,000 for fiscal year 2021.

The Assessor also performed a sales-comparison analysis for each fiscal year at issue using the subject property's updated fair cash values. The Assessor testified that she selected properties that had attributes like the subject property, specifically split-level and raised-ranch style homes. After applying adjustments, the subject property's proposed fair cash value for each fiscal year at issue "was in the correct range" of her comparable-sale properties. The Assessor thus concluded that

her proposed fair cash values accurately reflected the subject property's fair cash value for each of the fiscal years at issue.

The appellant acknowledged the Assessor's correction of the assessment of the subject property to reflect the subject home as one dwelling rather than two. However, she disagreed with some of the Assessor's application of the depreciation code of good and the coding of the area above the garage as FUS. The appellant also disputed the categorizing of the first-floor ceiling as a cathedral ceiling.

The appellant then performed her own comparable-sales analyses for the fiscal years at issue. Based on the sales that she cited, the appellant opined that the fair cash values for the subject property should be as follows: \$657,500 for fiscal year 2019; \$674,000 for fiscal year 2020; and \$655,000 for fiscal year 2021.

The Assessor challenged the comparability of several of the appellant's comparable-sales properties, pointing out that their dwellings were much smaller, lacked the subject home's finished area above the garage, and were less updated than the subject home. The Assessor further questioned the appellant's adjustments to the comparable properties' sale prices, testifying that, in some instances, the appellant used the same comparable properties that the Assessor used, but that the appellant's adjustments were significantly, and inexplicably, greater.

The Board found that the Assessor credibly testified regarding her assessment corrections applied to the fiscal years at issue, including correction of the acknowledged error that had resulted in assessing the subject home as two dwellings, as well as the depreciation code and FUS adjustments. The Board further found that the Assessor's comparable-sales analyses, by which she gauged the value of the adjusted fair cash value of the subject property for each fiscal year at issue, used sufficiently comparable properties, and that the Assessor made appropriate adjustments for differences between those properties and the subject property that affect fair cash value.

By contrast, the appellant's evidence, specifically her comparable-sales analyses, contained serious defects, such as using properties that were not sufficiently comparable to the subject property and applying large deductions to the Assessor's comparable properties that she could not justify, thus rendering her analyses unpersuasive.

Based on the evidence of record, the Board found and ruled that the Assessor's proposed fair cash values of \$774,600 for fiscal year 2019, \$788,100 for fiscal year 2020, and \$774,000 for fiscal year 2021 accurately represented the fair cash value of the subject property for the fiscal years at issue. Accordingly, because these values were lower than the assessed values for the subject property, the Board issued decisions for the appellant for



each of the fiscal years at issue and ordered abatements as follows: \$4,042.26 for fiscal year 2019; \$4,047.56 for fiscal year 2020; and \$2,540.20 for fiscal year 2021.<sup>3</sup>

### 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).

The assessment is presumed valid unless the taxpayer sustains her burden of proving otherwise. *Schlaiker v. Assessors of Great Barrington*, 356 Mass. 243, 245 (1974). Accordingly, the burden of proof typically is upon the appellant to make out her right as a matter of law to an abatement of the tax. *Id.* However, if the Board has made a finding of fair cash value for the property at issue for either of the two fiscal years preceding the fiscal year at issue, and the assessors have assessed the property at a value which exceeds the value found by the Board, then the burden of proving that the increase was warranted lies with the assessors. G.L. c. 58A, § 12A ("§ 12A"). See generally, *Beal v. Assessors of*

---

<sup>3</sup> These amounts include the appropriate portions of the CPA surcharge.

*Boston*, 389 Mass. 648, 651 (1983); *Brook Road Corporation v. Assessors of the Town of Needham*, Mass. ATB Findings of Fact and Reports 2001-648, 655; *Meka v. Assessors of the City of Beverly*, Mass. ATB Findings of Fact and Reports 2001-28, 35. "Once a prior determination of the Board of the fair cash value of the same property has been placed in evidence, however, the statute requires the appellee to produce evidence to 'satisfy the Board that the increased valuation was warranted.'" *Cressey Dockham & Co. Inc. v. Assessors of Andover*, Mass. ATB Findings of Fact and Reports 1989-72, 86-87 (quoting § 12A).

In the instant appeals, the subject property's assessments for fiscal years 2019 and 2020 at issue exceed the Board's determinations of value for fiscal year 2018. Pursuant to § 12A, the initial burden of justifying the increases in the subject property's valuations is on the appellee for fiscal years 2019 and 2020. The burden returns to the appellant for fiscal year 2021 to prove that the subject property was assessed for more than its fair cash value.

The Assessor did not attempt to justify the assessed values of the subject property but instead acknowledged that they were too high. The Board found the Assessor's testimony acknowledging the errors to be credible and her proposed method of valuing the subject property for the fiscal years at issue to be reasonable.

The Board thus adopted the Assessor's fair cash valuations for the subject property for the fiscal years at issue.

Having adopted the Assessor's proposed fair cash values, the Board found and ruled that the increases in the subject property's assessed values from its fiscal year 2018 value were not warranted for fiscal years 2019 and 2020, and further found and ruled that the subject property's fair cash value was less than its assessed value for fiscal year 2021.

Accordingly, the Board issued decisions for the appellant for each of the fiscal years at issue and ordered abatements as follows: \$4,042.26 for fiscal year 2019; \$4,047.56 for fiscal year 2020; and \$2,540.20 for fiscal year 2021.<sup>4</sup>

**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

---

<sup>4</sup> These amounts include the appropriate portions of the CPA surcharge.