COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PATRICIA I. DRURY	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF TEMPLETON**

Docket No. F339991

Promulgated:
May 2, 2022

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 Templeton ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Templeton, owned by and assessed to Patricia I. Drury ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2020 ("fiscal year at issue").

Commissioner DeFrancisco ("Presiding Commissioner") heard this 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 requests by the appellant and the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Stephen R. Drury for the appellant.[1]

Luanne E. Royer, Deputy Assessor, for the appellee.

[1] Steven Drury is the appellant's son. The appellant filed a power of attorney authorizing Mr. Drury to represent her in connection with this appeal.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and testimony submitted by the parties during the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

As of January 1, 2019, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of an improved 12,964-square-foot parcel of land in Templeton with an address of 18 Drury Lane ("subject property"). The appellee valued the subject property at $150,000 for the fiscal year at issue and assessed a tax thereon, at a rate of $16.83 per thousand, plus a Community Preservation Act surcharge, in the total amount of $2,684.75. The tax was paid late with accrued interest. However, late payment of tax was not an impediment to jurisdiction because the tax due for the fiscal year at issue was less than $5,000. *See* G.L. c. 59, § 64.

On January 28, 2020, the appellant timely filed an abatement application with the appellee, which the appellee denied on February 11, 2020. The appellant then seasonably filed a petition with the Board. Based on the preceding facts, the Presiding Commissioner found that the Appellate Tax Board ("Board") had jurisdiction over this appeal.

The subject property is improved with a two-story, conventional-style, single-family home containing 2,026 square feet of living area, consisting of four rooms, including two

bedrooms, as well as one full bathroom and one half bathroom ("subject home"). Other amenities of the subject home include a fireplace, a two-story chimney, and a wooden deck. The property record card on file with the appellee indicates that the subject home is in average condition, and the subject property received a 5-percent economic-obsolescence deduction in calculating its assessed value for the fiscal year at issue.

The appellant presented her case through the testimony of Steven Drury and the submission of documents. Claiming overvaluation of the subject property, the appellant's singular focus was on a 35-percent economic-obsolescence deduction that had been used to calculate the subject property's assessed value commencing in 2008. This deduction had gradually been reduced over several fiscal years to 5 percent for the fiscal year at issue. The appellant contested the reduction, arguing that factors that led to the original deduction were still present during the fiscal year at issue, namely, its proximity to a neighboring parcel of vacant land filled with trailers, campers, and other "nuisances."

During the hearing of the appeal, the Presiding Commissioner asked Mr. Drury for an opinion of the fair cash value of the subject property. Mr. Drury initially offered that the property might sell for about $300,000, but then rejected fair cash value as a determining factor in the appeal. Ultimately, he simply reiterated the appellant's assertion that the economic-

obsolescence deduction of 5 percent was too low and claimed that the deduction should be restored to its original level of 35 percent.

The appellee presented its case through the credible testimony of Deputy Assessor Luanne Royer and the submission of documents. Ms. Royer testified regarding the reduction of the economic-obsolescence deduction. She explained that when the deduction was first applied, there were two neighboring properties that contributed to the need for the higher deduction, but that one of the properties had changed ownership and its condition had been significantly improved.

Ms. Royer further testified that property values in the neighborhood of the subject property had steadily increased since the economic-obsolescence deduction was first applied in 2008. Ms. Royer also submitted a comparable-sales analysis that incorporated sales of four properties in the subject property's neighborhood, and opined that, based on recent sales in the area, sale prices had not been substantially reduced by economic obsolescence.

Based on the evidence presented, the Presiding Commissioner found that the appellant failed to meet her burden of proving that the subject property's assessment exceeded its fair cash value for the fiscal year at issue. The appellant offered no evidence to establish that the assessed value of the subject property was excessive. Indeed, as noted above, having acknowledged that the

subject property might sell for far more than its assessed value, the appellant asserted that fair cash value is not relevant to the outcome of the appeal. In contrast, the appellee offered evidence of a rising market, the improved condition of a neighboring property, and sales of properties in the neighborhood, all of which supported the contested assessment.

Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

OPINION

Assessors are required to assess real estate at its fair cash value. G.L. c. 59, § 38. Fair cash value is 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). Despite the appellant's assertion to the contrary, valuation cases brought before the Board, like the present appeal, hinge on these bedrock principles.

A taxpayer has the burden of proof to make out a right to an abatement of the assessed tax as a matter of law. ***Schlaiker v. Board of Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974). To sustain this burden, a taxpayer "may present persuasive evidence of overvaluation." ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983). In the instant appeal, the appellant challenged

only the assessors' reduction of the economic-obsolescence deduction for the subject property. However, the appellant failed to demonstrate how or why this reduction resulted in an assessed value that exceeded the subject property's fair cash value.

Moreover, when asked by the Presiding Commissioner for an opinion of the subject property's fair cash value, Mr. Drury responded with a value that exceeded the subject property's assessed value, thereby undermining an assertion that the subject property's assessed value was excessive.

Finally, though not necessary to reach a decision in this appeal, the assessors offered evidence that supported the contested assessment.

In sum, the appellant failed to present evidence of overvaluation. Therefore, the Presiding Commissioner found and ruled that the appellant failed to meet her burden of proving that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: */S/ Mark J. DeFrancisco*
Mark J. DeFrancisco, Commissioner

A true copy,

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