

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MATTHEW R. & KAREN E. FOYE

v.

BOARD OF ASSESSORS OF
THE TOWN OF PLYMPTON

Docket No. F335077

Promulgated:
May 15, 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 Plympton ("appellee" or "assessors"), to abate a tax on certain real estate located in Plympton owned by and assessed to Matthew R. and Karen E. Foye ("appellants"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2018 ("fiscal year at issue").

Commissioner Good ("Presiding Commissioner") heard this appeal and issued a single-member decision for the appellants in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20. These findings of fact and report are made pursuant to requests by both parties under G.L. c. 58A, § 13 and 831 CMR 1.32.

Karen E. Foye, pro se, for the appellants.

Jeffrey T. Blake, Esq., 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, 2017, the relevant date of valuation for this appeal, the appellants were the assessed owners of a property located at Fifty-nine Cedar Street in Plympton ("subject property").¹ For the fiscal year at issue, the assessors originally valued the subject property at \$452,000 and assessed a tax thereon, at a rate of \$17.52 per \$1,000, in the total amount of \$8,011.56.² In accordance with G.L. c. 59, § 57C, the appellants paid the tax due without incurring interest, and in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement on January 8, 2018. On March 19, 2018, the assessors voted to reduce the assessed value to \$432,000, and they sent notice of their decision the next day. Not satisfied with this abatement, the appellants seasonably filed an appeal under the formal procedure with the Appellate Tax Board ("Board") on May 9, 2018. On the basis of these facts, the Presiding

¹ A portion of the subject property is located in the neighboring town of Middleboro. The total lot size is 1.75-acres but the portion relevant to this appeal consists of 1.31-acres.

² This amount includes a Community Preservation Act ("CPA") surcharge.

Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.³

The subject property is improved with a single-family, 1.25-story, Cape Cod-style residence with clapboard siding, vinyl shutters, and a gable roof ("subject home"). According to the property record card maintained by the appellee, the subject home contains 2,667 square feet of finished living area and is comprised of seven rooms, including four bedrooms, as well as two full bathrooms, one half bathroom with laundry area, and an unfinished basement. The subject home includes a two-car heated garage with an unheated storage area above and a carport attached to the rear of the garage. Other features include two fireplaces, a 160-square-foot open porch, a twenty-four square-foot deck, and a storage shed.

The subject home's interior features hardwood flooring on the first floor and carpeting on the second floor, and the bathrooms and kitchen are rated as average style and quality.

The subject property has been the topic of prior litigation before the Board. For fiscal years 2014 and 2015,

³ At the hearing of this appeal, counsel for the appellee made an oral Motion to Dismiss for Failure to Allow Inspection of the Subject Property, pursuant to G.L. c. 58A, § 8A. The Presiding Commissioner denied the appellee's Motion, based on the credible testimony of Karen E. Foye, who stated that she allowed the assessors to inspect the subject property, with the exception of a single room in the unfinished basement. The appellant provided an adequate explanation of her inability to access that room. The Presiding Commissioner thus concluded that the appellants substantially complied with the Board's Order allowing inspection, and she therefore denied the appellee's Motion to Dismiss.

the Board found that the subject property's assessed value exceeded its fair market value and granted abatements for both years. Similarly, for fiscal year 2016, the Board found that the subject property's fair market value was \$365,000, which was lower than its assessed value for that year. Pursuant to G.L. c. 58A, § 12A, because this appeal involves one of the "next two fiscal years after a fiscal year for which the Board has determined the fair cash value" of the subject property, and because the assessed value of the subject property for the fiscal year at issue is greater than the value determined by the Board for fiscal year 2016, the appellee had the burden of proving that the increase in value was warranted. G.L. c. 58A, § 12A.

In support of the increased assessment, the appellee presented the testimony and appraisal report of Shaun Fitzgerald, ("appellee's appraiser"), a certified appraiser whom the Presiding Commissioner qualified as a real estate valuation expert.

The appellee's appraiser began by noting the market trend of increasing prices in Plympton in recent years. He testified that sale prices had increased at almost ten percent per year for the last few years. This testimony was supported by additional evidence in the record, including evidence of

properties that had sold twice in a short period of time, with the later sale being higher in price.

He considered the three traditional approaches to valuation, but ultimately relied upon the sales-comparison analysis to estimate a fair market value for the subject property. His sales-comparison analysis featured nine sales, some of which occurred in Plympton and some of which were located in neighboring Middleboro. Pertinent information about each property is contained in the tables below.

Appellee's Appraiser's Sales-Comparison Properties

Address	60 Cedar St., Middleboro	67 Cedar St., Plympton	11 Cedar St., Plympton	17 Cedar St., Plympton	62 Cedar St., Middleboro
Sale Date/Price	5/22/2016 \$395,000	8/9/2016 \$490,000	9/27/2016 \$440,000	9/26/16 \$374,000	6/30/17 \$425,000
GLA (sf)	2,020	2,872	2,400	1,248	2,153
Lot Size (sf)	121,762	96,703	299,801	296,531	80,000
Rooms/Beds/Baths	6/3/2.5	6/3/2	8/4/2	5/3/1	6/3/2
Style	Colonial	Cape	Ranch	Ranch	Cape
Adjusted Sale Price	\$419,625	\$491,500	\$403,700	\$448,290	\$422,230

Address	4 Popes Farm, Plympton	63 Cedar St., Plympton	8 Marie Elaine Dr., Plympton	22 Thos. Blanchard Dr., Plympton
Sale Date/Price (\$)	7/3/2018 \$525,000	8/30/18 \$470,000	10/5/18 \$471,500	1/18/19 \$450,000
GLA (sf)	2,874	2,128	2,064	2,128
Lot Size (sf)	134,600	80,150	63,920	78,408
Rooms/Beds/Baths	10/5/3.5	7/4/2.5	7/4/1.5	9/4/1.5
Style	Colonial	Colonial	Colonial	Colonial
Adjusted Sale Price	\$419,515	\$448,080	\$436,175	\$452,750

After adjustments to account for differences from the subject property in such qualities as finished living area,

lot size, and condition, the appellee's appraiser's purportedly comparable properties yielded sale prices ranging from \$403,700 to \$491,500. He ultimately concluded a fair market value for the subject property of \$430,000, slightly lower than its assessed value, as partially abated, of \$432,000.

The appellants presented their overvaluation case by first contending that the appellee made errors on the property record card with respect to the subject home's square footage of living area.

The appellants also presented a sales-comparison analysis and supporting documentation -- including supporting property record cards, pictures and Multiple Listing Service ("MLS") listings -- featuring three purportedly comparable properties in Plympton that sold during 2015. The following table contains relevant information about each of those properties.

Appellants' Sales-Comparison Properties

Address	38 Upland Rd., Plympton	227 Main St., Plympton	149 County Rd., Plympton
Sale Date/ Price	1/16/2015 \$383,000	5/22/2015 \$380,000	8/18/2015 \$377,000
GLA (sf)	2,559	2,080	2,328
Lot Size (sf)	44,431	106,722	47,916
Rooms/bed/bath	8/4/3	8/3/1.5	7/3/2
Style	Cape	Cape	Cape

The appellants stated an opinion of fair market value for the subject property of \$380,585 for the fiscal year at issue.

On the basis of the record in its totality, the Presiding Commissioner found that the subject property's assessed value of \$432,000, as partially abated, exceeded its fair market value for the fiscal year at issue. The Presiding Commissioner began by noting that even the appellee's appraiser concluded a fair market value lower than the assessed value. However, the Presiding Commissioner found that the record showed that sale prices in Plympton had been on the increase since the Board's fiscal year 2016 determination of value. On that basis, along with the market evidence discussed below, the Presiding Commissioner found that the assessors met their burden of justifying an increase over the Board's fiscal year 2016 fair market value of \$365,000.

Of the properties offered for comparison by the appellee's appraiser, the Presiding Commissioner found that just two - Sixty-two Cedar Street and Sixty-seven Cedar Street - were sufficiently similar to the subject property to provide a reliable indication of its fair market value. The property at located at Sixty-two Cedar Street sold for \$425,000 in June of 2017. The property located at Sixty-seven Cedar

Street sold for \$490,000 in August of 2016, but the Presiding Commissioner made a downward adjustment to the latter sale as that property had a substantial detached barn which made it superior to the subject property.

The Presiding Commissioner found that the remainder of the sales-comparison properties offered by the appellee's appraiser were too dissimilar from the subject property to furnish a reliable indication of its fair market value. For example, many of his chosen comparable properties were Colonial-style homes, rather than Cape-style like the subject property, while others had lot sizes several times larger than the subject property. The Presiding Commissioner found that these properties were simply too dissimilar from the subject property to provide probative evidence of its value.

Similarly, the Presiding Commissioner gave weight to some, but not all, of the appellants' comparable sales. Specifically, the Presiding Commissioner gave weight to Thirty-seven Upland Road and 227 Main Street, which were reasonably similar in size, style, and amenities to the subject property. Those properties sold for \$383,000 and \$380,000, respectively. The Presiding Commissioner gave no weight to the appellants' third comparable sale, 149 County Road, as that property lacked a garage, and thus it was inferior in a key feature to the subject property, which had

a heated, attached two-car garage with additional storage space.

After giving weight to the afore-mentioned comparable sales, along with the evidence of increasing sale prices in Plympton leading up to the fiscal year at issue, the Presiding Commissioner found a fair market value for the subject property of \$415,000 for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellants in the instant appeal and granted an abatement of \$302.31.⁴

OPINION

Assessors are required to assess all real property at its full and fair market value. G.L. c. 59, § 28; *Coomey v. Assessors of Sandwich*, 367 Mass. 836, 837 (1975). Generally, the assessors' valuation is presumed valid unless the taxpayers sustain their burden of proving otherwise. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). However, when the assessed value exceeds the value found by the Board for either of the two preceding fiscal years, the burden is on the assessors to prove that an increase was warranted. See G.L. c. 58A, § 12A ("§ 12A").

⁴ This amount includes an appropriate portion of the CPA surcharge.

In the present appeal, the assessment at issue falls within the two-year statutory period of § 12A. Therefore, the appellee had the burden of proving that an increase in the assessment from fiscal year 2016 was warranted. See, e.g., *Beal v. Assessors of Boston*, 389 Mass. 648 (1983); *Finlayson v. Assessors of Billerica*, Mass. ATB Findings of Fact and Reports 2007-531, 538; *Cressey Dockham & Co., Inc. v. Assessors of Andover*, Mass. ATB Findings of Fact and Reports 1989-72, 86-87.

In support of the increased assessment, the appellee's appraiser offered testimony along with a sales-comparison analysis relying on nine total sales from Plympton and neighboring Middleboro. The appellants, for their part, offered testimony and a sales-comparison analysis featuring three sales from Plympton in support of their request for an abatement. The Presiding Commissioner found that some of the properties offered for comparison by both parties were not sufficiently comparable to the subject property to provide a reliable indication of its fair market value. See, e.g., *Famiglia, LLC v. Assessors of Longmeadow*, Mass. ATB Findings of Fact and Reports 2008-1368, 1385 (rejecting sales-comparison analysis because properties lacked fundamental similarities to the property at issue).

However, the Presiding Commissioner afforded weight to select sales offered by both parties, as those sales were sufficiently comparable to the subject property in size, style, and amenities to provide persuasive evidence of its fair market value. After giving weight to these sales, and taking into consideration the evidence of increasing sale prices in Plympton in the period leading up to the fiscal year at issue, the Presiding Commissioner concluded a fair market value for the subject property of \$415,000 for the fiscal year at issue. See *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 604-605 (holding that the Board is entitled to base its decision on the record in its entirety, not merely the evidence tendered by the party with the burden of proof).

The Board need not specify the exact manner in which it arrived at its valuation. *Jordan Marsh Co. v. Assessors of Malden*, 359 Mass. 106, 110 (1971). The fair market value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." *Assessors of Quincy v. Boston Consolidated Gas Co.*, 309 Mass. 60, 72 (1941). In evaluating the evidence before it, the Board is entitled to select among the various elements of value and form its own independent judgment of fair market value. *General Electric Co.*, 393 Mass. at

605. "The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board." *Cummington School of the Arts, Inc. v. Assessors of Cummington*, 373 Mass. 597, 605 (1977).

Accordingly, the Presiding Commissioner issued a decision for the appellants in this appeal, and granted an abatement in the amount of \$302.31, inclusive of CPA surcharge.

THE APPELLATE TAX BOARD

By: /s/ Patrícia M. Good
Patricia M. Good, Commissioner

A true copy,

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