

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

TIMOTHY R. GRABARZ

**v. BOARD OF ASSESSORS OF THE
TOWN OF MIDDLEBOROUGH**

Docket No. F339915

Promulgated:
August 16, 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 Middleborough ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Middleborough owned by and assessed to Timothy R. Grabarz ("appellant") for fiscal year 2020 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20, and issued a single-member decision for the appellant.

These findings of fact and report are promulgated pursuant to a request by the appellee under G.L. c. 58A, § 13 and 830 CMR 1.32.

Timothy R. Grabarz, pro se, for the appellant.

Ross Lawrence, assessor, and Barbara Erickson, member of board of assessors, 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.

I. Introduction

On January 1, 2019, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of real property located at 85 Brookside Drive in the Town of Middleborough ("subject property"). The subject property consists of a 1.84-acre parcel of land improved with a 2,382-square-foot, ranch-style dwelling ("subject dwelling") containing three bedrooms and two and a half bathrooms. The subject property also features a two-car attached garage, a patio, a whirlpool tub, and an in-ground pool.

The assessors valued the subject property at \$507,800 for the fiscal year at issue and assessed a tax thereon at the rate of \$15.88 per \$1,000 in the amount of \$8,063.86, exclusive of the Community Preservation Act ("CPA") surcharge of \$64.76. The appellant paid the tax due without incurring interest. The appellant timely filed an abatement application with the assessors on December 16, 2019, and the assessors abated the assessed value down to \$486,700 ("revised assessed value"). The appellant sought a further reduction from the revised assessed value by timely filing a petition with the Appellate Tax Board

("Board"). Based upon this information, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

II. The appellant's case

The appellant contended that the fair cash value of the subject property for the fiscal year at issue was \$425,000. As support for his opinion of value, he provided testimony on his own behalf, focusing his narrative on the existence of certain grievances between the Town and property owners on Brookside Drive, including the appellant. In his analysis submitted to the Board, the appellant emphasized Brookside Drive's "unsightly retention ponds" lacking care by the Town, "substandard trees, non compliant sidewalks and a cheaper drainage solution than other neighborhoods in Town." He alleged that "[t]his was all done to help complete the road as cheaply as possible due to negligence by the then, Town Planner." He noted that property owners on Brookside Drive are currently embroiled in litigation with the Town and that there are \$18,000 betterments assessed to owners of each of the properties.

Turning to the subject property specifically, the appellant testified to ongoing water challenges that impact the subject property's basement. The basement is routinely exposed to flooding with no corrective solution available to alleviate this

burden, consequently preventing the appellant from finishing the basement and using it in any meaningful capacity.

The appellant also submitted several allegedly comparable properties into evidence, relying upon an unadjusted ratio of each property's assessed value for fiscal year 2020 to square feet of living area, and then applying the resultant ratio to the subject property's square footage.

III. The appellee's case

Apart from testifying on their own behalf, the assessors offered into evidence the jurisdictional documents, the subject property's property record card, and a property record card for an allegedly comparable property that sold for \$588,000 in November 2019. The assessors made no adjustments to this allegedly comparable property.

IV. The Presiding Commissioner's findings

The Presiding Commissioner found that the allegedly comparable properties offered by both parties provided no useful basis for comparison in the absence of adjustments. He also found that the appellant failed to demonstrate how the litigation with the Town and the betterment charges were somehow indicative of overvaluation. While the Presiding Commissioner found the appellant's testimony to be credible as to the existence of grievances on Brookside Drive, these grievances did not directly correlate to a reduction in fair cash value.

However, the Presiding Commissioner was persuaded by the appellant's testimony concerning the detrimental impact of routine and unavoidable flooding into the subject property's basement, the constant onslaught leaving the basement effectively useless.

Based upon all the evidence of record, the Presiding Commissioner found and ruled that the fair cash value of the subject property was \$465,000 for the fiscal year at issue, and consequently that the appellant was entitled to an abatement of \$348.04, inclusive of the CPA surcharge.

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 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).

A taxpayer has the burden of proving that the property at issue 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[] sustain[s] the burden of proving the contrary.'" **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (quoting **Schlaiker**, 365 Mass. at 245).

In appeals before the 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 parties failed to make any adjustments for differences between allegedly comparable properties and the subject property. See **Pompi v. Assessors of Adams**, Mass. ATB Findings of Fact and Reports 2021-326, 335 ("[T]he appellants did not attempt to make any adjustments for any differences between the selected properties and the subject property, as well as for economies of scale.") (citations omitted).

The Presiding Commissioner also ruled that there was no showing by the appellant as to how the pending litigation and betterment charges were indicative of overvaluation. While the Presiding Commissioner found the appellant's testimony to be

credible as to the existence of grievances on Brookside Drive, these grievances did not directly correlate to a reduction in fair cash value. See ***Fox v. Assessors of Longmeadow***, Mass. ATB Findings of Fact and Reports 2021-479, 483 ("While the Presiding Commissioner found that the appellants' testimony and evidence were credible as to the condition of the neighboring property, the lack of any quantifiable impact on the subject property's fair cash value was critically lacking.").

The Presiding Commissioner, however, was persuaded by the appellant's testimony concerning the detrimental impact of routine and unavoidable flooding into the subject property's basement that rendered it effectively useless. See ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."). The Presiding Commissioner found that this testimony provided meaningful evidence as to the unassailable challenges faced by the subject property, and that these challenges warranted a further reduction from the revised assessed value. See ***Jordan Marsh v. Assessors of Malden***, 359 Mass. 106, 110 (1971 (The Board need not specify the exact manner in which it arrived at its valuation.)); ***Assessors of Quincy v. Boston Consol. Gas Co.***, 309 Mass. 60, 72 (1941) (The fair cash value of property cannot be proven with "mathematical

certainty and must ultimately rest in the realm of opinion, estimate and judgment.").

Based upon the above and the evidence of record, the Presiding Commissioner found and ruled that \$465,000 was the fair cash value of the subject property for the fiscal year at issue. Accordingly, the Presiding Commissioner granted an abatement of \$348.04, inclusive of the CPA surcharge, for the subject property for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

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