

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

KEVIN A. GRIFFIN

v.

**BOARD OF ASSESSORS OF THE
TOWN OF SCITUATE**

Docket No. F346113

Promulgated:
January 16, 2024

This is an appeal under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the Board of Assessors of the Town of Scituate ("assessors" or "appellee") to abate a tax on certain real estate located in Scituate, owned by and assessed to Kevin A. Griffin ("appellant"), for fiscal year 2022 ("fiscal year at issue").

Commissioner Elliott heard this appeal. He was joined by Chairman DeFrancisco and Commissioners Good, Metzger, and Bernier in the decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

Kevin A. Griffin, pro se, for the appellant.

Joseph Divito, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of an improved 10,000-square-foot parcel of land located at 6 Minot Light Avenue in Scituate ("subject property"). The subject property is improved with a prefab, ranch-style, single-family dwelling constructed in 2013 ("subject dwelling"). The subject dwelling contains 1,232 square feet of living area comprised of five rooms, including two bedrooms, as well as two full bathrooms. The subject property also features a two-car attached garage, an unfinished basement, and a deck.

For the fiscal year at issue, the assessors valued the subject property at \$552,500 and assessed a tax thereon, at the rate of \$12.62 per thousand, in the total amount of \$7,143.87, which included the Community Preservation Act surcharge. The appellant timely paid the tax due without incurring interest. On January 20, 2022, the appellant timely filed an application for abatement with the assessors. On March 10, 2022, the assessors granted a partial abatement, reducing the subject property's assessed value to \$529,800. The appellant seasonably filed his appeal with the Board

on April 6, 2022. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant testified on his own behalf and submitted several documents including a written statement and a listing of eight properties located on Minot Light Avenue, with the properties' finished living areas and the assessed values for the fiscal year at issue. The appellant also introduced the property record cards for six of the eight properties listed. The appellant noted that all properties on Minot Light Avenue are situated on a 10,000-square-foot parcel and therefore, he maintained, the comparison of assessed values is straightforward. The appellant's cited properties ranged in size from 1,118 square feet to 1,867 square feet of finished living area, with assessed values ranging from \$424,200 to \$500,200 for the fiscal year at issue. The appellant noted that although the subject property has the second to smallest finished living area, it has the highest assessed value for the fiscal year at issue. Therefore, the appellant argued, this supported his claim that the subject property was overvalued for the fiscal year at issue. The appellant did not, however, account for differences between the purportedly comparable properties and the subject property.

The appellant also argued that prefab homes are worth less than standard built homes. The appellant failed to offer any evidence to substantiate this claim.

The assessors did not offer any affirmative evidence of value, instead resting on the presumptive validity of the assessment.

Based on the evidence presented, the Board found and ruled that the appellant failed to meet his burden of proving that the fair cash value of the subject property was lower than its assessed value for the fiscal year at issue. The appellant's evidence showed that the subject property had a higher assessed value than the purportedly comparable properties. However, as evidenced by the property record cards, the majority of these properties were built during 1959-1960, more than fifty years prior to the construction of the subject property. In addition, many of the purportedly comparable properties were constructed on a slab foundation and lacked a basement, unlike the subject property that has a full basement. Lastly, only two properties had a one-car garage, and the remaining had no garage, whereas the subject property has a two-car attached garage. The appellant failed to take any of these factors into consideration. Therefore, the Board found that the appellant's analysis was flawed and lacked any probative weight.

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

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 this appeal, in support of his claim that the subject property was overvalued for the fiscal year at issue, the appellant offered into evidence the assessed values of purportedly comparable properties located on the same street as subject property. The appellant argued that even though the subject

property had the second smallest finished living area of all properties, it had the highest assessed value for the fiscal year at issue. Therefore, he maintained, this supported his claim of overvaluation for the fiscal year at issue.

General Laws c. 58A, § 12B provides in pertinent part that at "any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible."

The introduction of such evidence may provide adequate support for the granting of an abatement. **Chouinard v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing **Garvey v. Assessors of West Newbury**, Mass. ATB Findings of Fact and Reports 1995-129, 135-36, and **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80. However, purportedly comparable properties used in a comparable-assessment analysis must be adjusted, just like those used in a comparable-sales analysis, for differences with the subject property. See **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 402 ("The assessments in a comparable assessment analysis, like the sale prices in a comparable sales analysis, must also be adjusted to account for differences with the subject."), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (Rule 1:28 Decision); **Lupacchino v. Assessors of**

Southborough, Mass. ATB Findings of Fact and Reports 2008-1253, 1269 ("[W]ithout the appropriate adjustments, . . . the assessed values of [comparable] properties did not provide a reliable indicator of the subject's fair cash value.").

In the instant appeal, the appellant submitted evidence of purportedly comparable assessments but failed to provide any adjustments for differences between those properties and the subject property that affect fair cash value which, as noted above, were substantial. The Board, therefore, found that this evidence failed to provide a reliable indication of fair cash value and thus ruled that the appellant failed to meet his burden of proving that the subject property was overvalued for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in the instant appeal.

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