

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MICHAEL KERNAN

**v. BOARD OF ASSESSORS OF THE
TOWN OF GREAT BARRINGTON**

Docket No. F340144

Promulgated:
August 18, 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 Great Barrington ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Great Barrington owned by and assessed to Michael Kernan ("appellant") for fiscal year 2020 ("fiscal year at issue").

Chairman 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 promulgated pursuant to a request by the appellant under G.L. c. 58A, § 13 and 830 CMR 1.32.

Michael Kernan, *pro se*, for the appellant.

Ross Vivori, assessor, 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, 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 12 Mahaiwe Street in the Town of Great Barrington ("subject property"). The subject property consists of a 0.29-acre parcel of land improved with a 2,720-square-foot, Colonial-style, two-family residence featuring five bedrooms and two bathrooms.

The assessors valued the subject property at \$310,300 for the fiscal year at issue, and assessed a tax thereon at the rate of \$15.75 per \$1,000 in the amount of \$4,887.23, exclusive of the Community Preservation Act surcharge and Great Barrington Fire District tax. The appellant paid the tax due without incurring interest. The appellant filed an abatement application with the assessors on December 2, 2019, which was deemed denied on March 2, 2020. The appellant timely filed a petition with the Appellate Tax Board ("Board") on May 28, 2020. Based upon this information, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The appellant contended that the subject property should be valued at \$235,000 for the fiscal year at issue, despite having

purchased the subject property for \$316,000 on July 13, 2018, slightly more than five months prior to the relevant assessment date. He relied upon ten allegedly comparable neighborhood properties, but only two of these properties were two-family residences like the subject property. The appellant also contended that four, 3.5-story, not-yet-built apartment buildings and a surface parking lot in the neighborhood diminished the value of the subject property.

The Presiding Commissioner found that the purchase price that the appellant paid for the subject property in an arm's-length transaction was the most probative evidence of the subject property's fair cash value for the fiscal year at issue. The purchase was sufficiently close in time to the assessment date and the purchase price even exceeded the subject property's assessed value for the fiscal year at issue by \$5,700. The future construction of apartment buildings in the neighborhood of the subject property likewise did not constitute credible evidence to justify a decrease in assessed value. The appellant presented no correlation between these future structures and a diminution in neighborhood real estate values for the fiscal year at issue.

Based upon the above and all the evidence of record, the Presiding Commissioner found and ruled that the appellant failed to establish that the assessed value of the subject property

exceeded its fair cash value for the fiscal year at issue, and accordingly issued a decision for the appellee for the fiscal year at issue.

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 appellant failed to provide persuasive evidence of overvaluation. The future construction of apartment buildings and a surface lot in the neighborhood of the subject property evidenced no direct detrimental bearing on the subject property's fair cash value for the fiscal year at issue. Further, the allegedly comparable properties offered by the appellant were not sufficiently comparable to be of any utility. The most probative evidence of the subject property's fair cash value was the purchase price that the appellant paid for the subject property in an arm's-length transaction that took place slightly more than five months prior to the assessment date. The purchase price exceeded the assessed value for the fiscal year at issue by \$5,700. See **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981) ("We have observed in the past that '[a]ctual sales are . . . very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for a particular property.'" (citation omitted)). See also **Kane v. Assessors of Topsfield**, Mass. ATB

Findings of Fact and Reports 2000-409, 411 (finding that a sale of the subject property approximately three months before the relevant assessment date was the best evidence of the subject's fair cash value absent any evidence of compulsion); **Angelini v. Assessors of Boxford**, Mass. ATB Findings of Fact and Reports 2021-350, 356 ("In this appeal, the Board found and ruled that the appellant provided no credible evidence to establish that the assessed value of the subject property was less than the appellant paid in an open-market, arm's-length transaction taking place within a year and a half of the relevant valuation date.") (citations omitted); **Opanasets v. Assessors of Plymouth**, Mass. ATB Findings of Fact and Reports 2010-532, 540 ("In this appeal, the Board found and ruled that the sale of the subject property within eighteen months of the assessment date was reasonably proximate to the assessment date, and that the sale price of \$735,000 supported the assessment of \$618,600.").

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Based upon the above and all the evidence of record, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of establishing that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee.

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