

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ALAN LEVIN

v.

BOARD OF ASSESSORS OF THE
TOWN OF NORTON

Docket No. F344927

Promulgated:
May 2, 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 Norton ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Norton, owned by and assessed to Alan Levin ("appellant"), for fiscal year 2022 ("fiscal year at issue").

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

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.¹

Alan Levin, pro se, for the appellant.

Denise Ellis, Director of Assessing, for the appellee.

¹This citation is to the version of the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on the testimony and exhibits admitted 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 valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 2.85-acre parcel of real estate, improved with a single-family Colonial-style dwelling ("subject dwelling") located at 205 John B. Scott Boulevard in Norton ("subject property"). The subject dwelling has a finished living area of 3,334 square feet comprised of seven rooms, including three bedrooms, as well as two full bathrooms and one half bathroom. A large two-car detached garage was built in 2018. According to the property record card for the fiscal year at issue, the subject dwelling is in above-average condition.

For the fiscal year at issue, the assessors valued the subject property at \$823,900 and assessed a tax thereon, at the rate of \$14.26 per thousand, in the total amount of \$11,748.81. The appellant timely paid the tax due without incurring interest. On January 18, 2022, the appellant timely filed an application for abatement with the assessors, which was denied by the assessors on February 1, 2022. The appellant seasonably filed his appeal with

the Board on April 19, 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 offered into evidence a written valuation statement, including property record cards. First, the appellant disputed the assessors' characterization of the subject dwelling's condition as "above average." The appellant testified that he purchased the subject property at foreclosure and had to repair and finish many items in the subject dwelling. Therefore, he argued, the subject dwelling should not be graded the same in quality of other properties located on the same street. The appellant also argued that the subject property, which is located on a private lane, is negatively impacted by the lack of public maintenance, and also the train tracks that are located to the rear of the parcel.

The appellant also offered into evidence the property record cards for eight Colonial-style properties that sold during 2020 and compared their sale prices to their assessed values for the fiscal year at issue. From this data, which indicated that these properties' assessed values exceeded their sale prices, the appellant argued that the subject property was overvalued for the fiscal year at issue. The sale prices for the appellant's purportedly comparable properties ranged from \$638,700 to \$897,000. The appellant's opinion of the subject property's fair cash value for the fiscal year at issue was \$670,000.

For their part, the assessors submitted the requisite jurisdictional documentation and rested on the presumed validity of the assessment.

Based on the evidence presented, the Board found and ruled that the appellant met his burden of proving that the subject property's fair cash value was less than its assessed value for the fiscal year at issue. In reaching this conclusion, the Board found persuasive the comparable sales information offered by the appellant. The Board gave the most weight to the appellant's comparable sale located at 9 Downing Drive, which sold for \$800,000 in December 2020. Based on this evidence, considering differences in lot size, living area, age, and amenities, compared to the subject property, the Board determined that the subject property's fair cash value for the fiscal year at issue was \$785,000.

Accordingly, the Board issued a decision for the appellant in this appeal and granted abatement in the amount of \$554.71.

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)).

Actual sales generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 682 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 469 (1981); **First National Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 560 (1971). "Adjustments

must be made to . . . sales data to account for differences between the subject property and the properties offered for comparison."

Doherty v. Assessors of Lee, Mass. ATB Findings of Fact and Reports 2013-174, 181 (citing **Lareau v. Assessors of Norwell**, Mass. ATB Findings of Fact and Reports 2010-879, 889-90).

In the present appeal, the Board found that the comparable sales information introduced by the appellant provided useful data for ascertaining the fair cash value of the subject property. In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. **General Electric Co.**, 393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984).

The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v. Assessors of Malden**, 359 Mass. 106, 110 (1971). The fair cash 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).

On the basis of the record as a whole, with particular reliance on the sale of 9 Downing Drive, the Board determined a fair cash value for the subject property of \$785,000 for the fiscal year at issue. The Board therefore decided this appeal for the appellant and granted abatement in the amount of \$554.71.

THE APPELLATE TAX BOARD

By: 

Mark J. DeFrancisco, Chairman

A true copy,

Attest: 

Clerk of the Board