

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**MATTHEW D. PHILLIPS, TRUSTEE v. BOARD OF ASSESSORS OF THE
TOWN OF MIDDLEBOROUGH**

Docket No. F339913

Promulgated:
May 5, 2023

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 Matthew D. Phillips, Trustee ("appellant") for fiscal year 2020 ("fiscal year at issue").

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

These findings of fact and report are promulgated pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Matthew D. Phillips, pro se, for the appellant.

Ross Lawrence, 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 Presiding Commissioner made the following findings of fact.

On January 1, 2019, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 33,541-square-foot parcel of real estate, improved with a Cape-Cod-style, single-family home, located at 95 Old Center Street in Middleborough ("subject property"). The subject dwelling was originally built in 1930, with an in-law suite added in 2015 to accommodate the appellant's ailing father. The subject dwelling has a total living area of 1,771 square feet, including four bedrooms and two bathrooms. The appellant testified that the subject dwelling is best described as "the house that Jack built," noting that things are not even and, overall, the house was put together in a patchwork fashion.

For the fiscal year at issue, the assessors valued the subject property at \$430,500 and assessed a tax thereon, at the rate of \$15.88 per \$1,000, in the total amount of \$6,888.82, inclusive of the Community Preservation Act surcharge ("CPA"). The appellant paid the tax due without incurring interest. On December 2, 2019, in accordance with G. L. c. 59, § 59, the appellant timely filed an application for abatement with the assessors, which the assessors denied on February 13, 2019. The appellant seasonably

filed a petition with the Appellate Tax Board ("Board") on May 11, 2020.¹ Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

In support of his claim that the subject property was overvalued for the fiscal year at issue, the appellant offered into evidence property record cards for three properties located at 97, 104, and 105 Old Center Street. These properties ranged in size from five acres to thirty acres and were improved with single-family homes that were larger compared to the subject dwelling. The appellant also noted that the property at 104 Old Center Street, which had substantially more acreage than the subject property as well as a larger residence, sold in July of 2020 for \$400,000.

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 Presiding Commissioner found that the subject property's fair cash value was less than its assessed value for the fiscal year at issue. The Presiding Commissioner found that data submitted for the properties located on the same street as the subject property, including the sale of

¹ The appellant's petition was stamped as received by the Board on May 26, 2021, but the petition was mailed in an envelope postmarked May 11, 2021. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

the property at 104 Old Center Street, were probative evidence that the subject property's fair cash value was less than its fair cash value for the fiscal year at issue. Based on this evidence, the Presiding Commissioner found that the subject property's fair cash value for the fiscal year at issue was \$400,000.

Accordingly, the Presiding Commissioner decided this appeal for the appellant and granted abatement in the amount of \$489.18, inclusive of the CPA.

OPINION

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 in a free and open market 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 (1998) (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)).

The Presiding Commissioner need not specify the exact manner in which she arrived at her 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**, 309 Mass. 60, 72 (1941). In evaluating the evidence before her, the Presiding Commissioner may select from among the various elements of value and form her own independent judgment of fair cash value. **General Electric Co.**, 393 Mass. at 605. "The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the [Presiding Commissioner]." **Cumington School of the Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977).

Based on the evidence presented, the Presiding Commissioner found and ruled that the subject property's fair cash value was less than its assessed value for the fiscal year at issue. In particular, the Presiding Commissioner found that data submitted for the properties located on the same street as the subject property, as well as that from the sale of the property located at 104 Old Center Street, provided probative evidence to demonstrate that the subject property's fair cash value was less than its fair cash value for the fiscal year at issue. Based on this evidence, the Presiding Commissioner ultimately found that the subject property's fair cash value for the fiscal year at issue was \$400,000.

Accordingly, the Presiding Commissioner decided this appeal for the appellant and granted an abatement in the amount of \$489.18, inclusive of the CPA surcharge.

THE APPELLATE TAX BOARD

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

A true copy,

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