

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

TAMMY ROSE

**v. BOARD OF ASSESSORS OF THE
CITY OF PITTSFIELD**

Docket No. F335964

Promulgated:
July 29, 2020

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 City of Pittsfield ("assessors" or "appellee") to abate a tax on certain real estate located in the City of Pittsfield owned by and assessed to Tammy Rose ("appellant") for fiscal year 2018 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal and in accordance with G.L. c. 58A, § 1 and 831 CMR 1.20 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 831 CMR 1.32.

Tammy Rose, pro se, for the appellant.

Norman Haas, assessor, and Paula King, 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, 2017, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of property located at 611 Lakeway Drive along the shores of Onota Lake ("subject property"). The subject property consists of a 6,000-square-foot, lakefront parcel of land ("subject parcel") improved with a 675-square-foot, 1.25-story, bungalow-style dwelling constructed in 1920 ("subject dwelling"). The three-room subject dwelling, which rests on a pier foundation, has one bedroom and one bathroom, as well as a small enclosed porch and a deck.

For the fiscal year at issue, the assessors valued the subject property at \$270,800 and assessed a tax thereon at the rate of \$20.01 per thousand, in the amount of \$5,452.89, inclusive of a Community Preservation Act ("CPA") surcharge. The appellant timely paid the tax due without incurring interest.

On January 30, 2018, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which the assessors denied on April 24, 2018. The appellant timely filed a Statement Under Informal Procedure with the Appellate Tax Board ("Board") on May 14, 2018. On June 18,

2018, within thirty days of the date of service of the Statement Under Informal Procedure, the assessors elected to transfer the appeal from the informal to the formal procedure pursuant to G.L. c. 58A, § 7A. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

For fiscal year 2017, the Board issued a decision reducing the subject property's assessed value from \$269,500 to \$240,000. Therefore, pursuant to G.L. c. 58A, § 12A, the burden shifted to the appellee to justify its increase in value for the subject property for the fiscal year at issue.

To meet this burden, the appellee presented the testimony of Norman Haas and Paula King, both holding positions as assessors with the appellee, and the testimony of Ryan Grennan, a GIS coordinator. The appellee entered into evidence jurisdictional documents, a copy of the Board's fiscal year 2017 decision concerning the subject property, and an assessment report that included land valuation spreadsheets, land comparables, and sale comparables.

According to the assessors' land valuation spreadsheets, the subject property is classified as a waterfront model 17, not the more valuable waterfront model 18 classification.¹ To derive

¹ For instance, a model 17 at 10,000 square feet is valued at \$262,500, while a model 18 at 10,000 square feet is valued at \$480,000.

the assessed value of the subject property, the assessors used a base land value of \$262,500 (10,000 square feet at \$26.25 per square foot) for waterfront model 17 properties and then subtracted \$24,000 (\$6.00 per square foot x 4,000 square feet)² to arrive at a land value of \$238,500 for the 6,000 square feet comprising the subject parcel. The assessors added the subject dwelling's value of \$32,300 to arrive at the assessed value of \$270,800 for the fiscal year at issue

For their land comparables, the assessors selected eight Pittsfield properties - each located on Lakeway Drive and classified as waterfront model 17 - with parcel sizes ranging from 6,050 square feet to 32,659 square feet and building sizes ranging from 908 square feet to 3,106 square feet. For their sale comparables, the assessors selected two Pittsfield properties: a property located at 623 Lakeway Drive that sold for \$395,000 in December 2017 and a property located at 76 Shore Drive that sold for \$390,000 in April 2019. Both properties included more than double the living area of the subject dwelling, more bedrooms, more bathrooms, and more amenities overall, such as garaged parking. The dwelling at 623 Lakeway Drive was newly constructed in 2018.

² For parcels under 10,000 square feet, the assessors subtracted a factor of \$6.00 per square foot. For parcels larger than 10,000 square feet, the assessors added a factor of \$1.25 per square foot.

The appellant testified on behalf of herself and entered into evidence photographs of the subject property purporting to establish the subject property's overall condition and essential repairs due to a broken pipe; realtor.com and usrealtyrecords.com listings of the subject property; and a neighborhood map. She contended that the subject property fronts a shallow portion of the lake, making it less desirable than other areas of the lake and that the trailer park across the street contributes to its lesser value. She acknowledged using the subject property year-round, but noted that it has no insulation, is very expensive to heat, and suffered from a burst pipe the prior winter. The appellant also relied upon the Board's prior value determination for fiscal year 2017 as grounds for a reduction here. She acknowledged, however, that her research revealed that the value of the subject property had increased between the January 1, 2016 valuation date for fiscal year 2017 and the January 1, 2017 valuation date for the fiscal year at issue.

Based on all the evidence of record, the Presiding Commissioner found the assessors' analysis failed to support the assessed value for the fiscal year at issue. The assessors' land valuation spreadsheets - indicating a base value of \$26.25 per square foot for model 17, 10,000-square-foot waterfront lots, with upwards and downwards adjustments for larger and smaller

lots, respectively - provided no underlying explanation for how the assessors derived these base figures and adjustment factors. The two sale comparables offered by the assessors were of properties markedly different from the subject property, in size and features. The eight land comparables offered by the assessors were also largely distinguishable, exceeding the subject property in size. Consequently, the Presiding Commissioner found that the assessors failed to meet their burden of justifying their value increase for the fiscal year at issue.

The Presiding Commissioner did, however, find that the record supported a more modest increase in the assessed value for the fiscal year at issue over the value determined by the Board for fiscal year 2017, particularly since the appellant acknowledged an increase in value over the Board's fiscal year 2017 value. The Presiding Commissioner determined that a fair cash value of \$250,000 appropriately reflected the subject property's fair market value for the fiscal year at issue, representing an approximately four percent increase from the fiscal year 2017 fair cash value of \$240,000.

On the basis of this evidence, the Presiding Commissioner decided this appeal for the appellant and granted an abatement in the amount of \$420.37, inclusive of a 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). Generally, the burden of proof is upon the taxpayer to prove that property has a lower value than that assessed. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974) (citing *Judson Freight Forwarding Co. v. Commonwealth*, 242 Mass. 47, 55 (1922)). The assessment is presumed valid unless the taxpayer proves otherwise. *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (citing *Schlaiker*, 365 Mass. at 245).

If, however, the assessment at issue exceeds the Board's prior determination of the subject property's fair cash value for either of the two immediately preceding fiscal years, then, pursuant to G.L. c. 58A, § 12A, "the burden shall be upon the [assessors] to prove that the assessed value was warranted." Accordingly, because the Board's fiscal year 2017 determination of value was less than the assessed value of the subject property for the fiscal year at issue, the Presiding Commissioner ruled in this appeal that the burden of going forward to justify the increase in the subject property's

assessment was on the assessors. See generally *Beal v. Assessors of Boston*, 389 Mass. 648 (1983); see also *Cressey Dockham & Co., Inc. v. Assessors of Andover*, Mass. ATB Findings of Fact and Reports 1989-72, 86-87 ("Once a prior determination of the Board of the fair cash value of the same property [for one of the prior two fiscal years] has been placed in evidence, [] the statute requires [that the assessors] produce evidence to 'satisfy the Board that the increased valuation was warranted.'").

In the present appeal, the Presiding Commissioner found that the assessors failed to meet their burden of proof. Their analysis lacked sufficient explanation and their comparables were too dissimilar to the subject property to justify the assessed value's increase over the fiscal year 2017 value. The Presiding Commissioner did find that the record supported a modest increase, however, based upon the appellant's acknowledgment that the market value of the subject property had increased.

On the basis of the foregoing, the Presiding Commissioner decided this appeal for the appellant and granted an abatement in the amount of \$420.37, inclusive of a CPA surcharge.

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