

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ROBERT H. RYAN

v.

BOARD OF ASSESSORS OF  
THE TOWN OF SHREWSBURY

Docket No. F341789

Promulgated:  
September 9, 2022

This is an appeal under the formal procedure<sup>1</sup> 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 Shrewsbury ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Shrewsbury, assessed to Robert H. Ryan ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2020 ("fiscal year at issue").

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

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

*Robert H. Ryan, pro se*, for the appellant.

*Ruth T. Anderson*, Principal Assessor, for the appellee.

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<sup>1</sup> The appellant originally filed a Statement Under Informal Procedure. Within thirty days, the assessors elected to transfer the proceedings to the formal docket. See G.L. c. 58A, § 7A.

## **FINDINGS OF FACT AND REPORT**

Based on documentary evidence and testimony submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2019, the valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 0.57-acre parcel of land improved with a single-family home with an address of 8 Colonial Drive in Shrewsbury ("subject property").

For the fiscal year at issue, the appellee valued the subject property at \$571,700 and assessed a tax thereon, at the rate of \$12.47 per \$1,000, in the total amount of \$7,129.10. The appellant paid the tax timely. On January 31, 2020, the appellant timely filed an Application for Abatement with the appellee, which was denied on February 28, 2020. The appellant timely filed a petition with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property was improved with a single-family, Colonial-style residence with 2,868 square feet of living area, which included four bedrooms, as well as two and one-half bathrooms ("subject home"). The subject home included four fireplaces, a garage, and a finished enclosed porch. The subject property also included an inground swimming pool, but it was non-functioning during the relevant period. The subject home was built in 1974,

and the property record card showed no building permits for updates or improvements.

The appellant presented his case through his own testimony, a written statement, and several documents. The appellant testified to several examples of deferred maintenance at the subject property, including the need for a new roof and two new sets of stairs, as well as the swimming pool's state of disrepair.

The appellant submitted an appraisal report valuing the subject property for purposes of a mortgage ("mortgage appraisal"). The mortgage appraisal cited four purportedly comparable-sale properties ranging from \$452,000 to \$495,000. After applying adjustments, the appraiser arrived at a concluded value of \$446,000 for the subject property as of November 2019. The appraiser was not a witness in these proceedings and therefore was not available for cross-examination by the appellee or questioning by the Board. As will be further explained in the following Opinion, the opinions of value contained in the mortgage appraisal were unsubstantiated hearsay and thus unpersuasive. Nevertheless, the Board found that the pictures therein were suitable for demonstrating the condition of the subject property. These pictures revealed a lack of upkeep and the overall dated condition of the subject property.

The appellant next submitted a property valuation from the Probate Court made in connection with his divorce proceedings. The

appellant testified, credibly, that it was a contentious divorce, and that his ex-wife wanted to obtain the highest value for the subject property because the appellant was going to purchase her half of the property as part of the divorce proceedings. He further testified that several appraisals had been performed some months earlier to value the subject property for these proceedings. After taking into consideration these appraisals, the Probate Court set the subject property's value at \$458,500 as of March 2019. The appellant adopted this figure for his opinion of the subject property's fair cash value for the fiscal year at issue.

Finally, the appellant testified he researched the cost of repairs needed to increase the subject property's fair cash value. Based on that research, he concluded that at least \$100,000 would need to be invested toward improving the subject property to bring its fair cash value into the \$500,000 range.

Having produced the requisite jurisdictional documents, the appellee presented its case through the testimony of Ruth Anderson, Principal Assessor ("Assessor"), and the submission of valuation documents. The Assessor challenged numerous components of the mortgage appraisal, including several questionable adjustments to the purportedly comparable properties, the use of a comparison property that was merely a listing and not a consummated sale, and the fact that the mortgage appraisal was performed nearly one year after the relevant assessment date. The Assessor also pointed out

that the purportedly comparable sales used in the mortgage appraisal were located miles away from the subject property.

The Assessor next submitted sales listings and property record cards for several purportedly comparable sales located closer to the subject property. The Assessor testified that these sales had a median price of \$669,000. However, upon reviewing these sales, the Board found that several of the Assessor's purportedly comparable properties were clearly and significantly superior to the subject property, particularly those that were brand new construction or decades newer than the subject home.

The Board nevertheless found that one of the Assessor's comparable-sale properties provided relevant information for this appeal: 6 Tory Lane. This property was a 0.97-acre parcel improved with a Colonial-style home containing 2,800 square feet of living area. With a new addition and twice the lot size of the subject property, the Board found this property to be superior to the subject property. The property at 6 Tory Lane sold in October 2019 for \$495,000.

After considering the sale of 6 Tory Lane, along with the appellant's testimony and documentary evidence of the condition of the subject property, as well as giving some consideration to the Probate Court's finding of value, the Board determined a fair cash value of \$475,000 for the subject property for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant ordering abatement of \$1,205.85.

### 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 are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

The appellant has the burden of proving that the property 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 taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In support of his case, the appellant presented the mortgage appraisal, prepared at the request of a bank in connection with a financing application for the subject property, which included a sales-comparison valuation analysis of the subject property. The

appraiser was not a witness at the hearing and was thus unavailable for cross-examination by the appellee or for questioning by the Board. The Board considered the opinions contained in the mortgage appraisal to be unsubstantiated hearsay and thus unpersuasive for establishing the subject property's fair cash value. See **Litus v. Assessors of Brockton**, Mass. ATB Findings of Fact and Reports 2015-164, 170-71 (rejecting opinion of value contained in an appraisal report prepared for a bank as hearsay where author of report did not testify at hearing). Even so, the Board found that the pictures contained in the mortgage appraisal were appropriate for demonstrating the overall dated and, in some instances, poor condition of the subject property. The Board also gave some consideration to the Probate Court's finding of value.

The Assessor offered several sales of purportedly comparable properties. However, the Board found most of these properties were "fundamentally dissimilar" to the subject property "and therefore not sufficiently comparable to derive meaningful valuation evidence." **Sterling v. Assessors of Arlington**, Mass. ATB Findings of Fact and Reports 2021-76, 89; see also **Lareau v. Assessors of Norwell**, Mass. ATB Findings of Fact and Reports 2010-879, 894. However, considering the sale of 6 Tory Lane, along with the appellant's testimony and documentary evidence of the condition of the subject property, as well as giving some consideration to the Probate Court's finding of value, the Board determined a fair cash

value of \$475,000 for the subject property for the fiscal year at issue.

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). Based on its review of all the evidence, the Board found and ruled that the subject property's fair cash value for the fiscal year at issue was \$475,000.

Accordingly, the Board issued a decision for the appellant in this appeal and granted an abatement in the amount of \$1,205.85.

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