COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

**DONALD A. SCAGEL v.   BOARD OF ASSESSORS OF**

**THE TOWN OF HEATH**

Docket No. F329049   Promulgated:

  December 18, 2018

This is an appeal filed under the formal procedure  pursuant to G.L. c. 58A, § 7, G.L. c. 59, §§ 64 and 65, and 831 CMR 1.03 and 1.04, from the refusal of the Board of Assessors of the Town of Heath (“assessors” or “appellee”) to abate a tax on certain real estate in the Town of Heath owned by and assessed to Donald A. Scagel (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016.

    Commissioner Chmielinski (“the Presiding Commissioner”) heard this appeal under G.L. c. 58A, § 1A and 830 CMR 1.20, and issued a single-member 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.

*Donald A. Scagel, pro se*,for the appellant.

*Robyn Provost-Carlson, assessor,* and *Alice Wozniak, assistant* assessor, for the appellee.

**FINDINGS OF FACT AND REPORT**

On January 1, 2015, the relevant valuation and assessment date for fiscal year 2016, the appellant was the assessed owner of an approximately .25-acre parcel of land improved with a 486-square-foot building located at 30 Papoose Lake Drive in Heath (“subject property”). The dwelling had no drywall or insulation, but was equipped with electricity, a refrigerator, and a toilet. The subject property also contained a well and septic access (“septic”).

For fiscal year 2016, the assessors valued the subject property at $34,100, and assessed a tax thereon, at the rate of $20.51 per thousand, in the amount of $699.39. The appellant timely paid the tax due without incurring interest. On January 7, 2016, the appellant timely filed an application for abatement with the assessors, which the assessors denied on February 15, 2016. The appellant seasonably filed his appeal with the Appellate Tax Board (“Board”) on March 30, 2016. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

In support of his assertion that the subject property was overvalued for fiscal year 2016, the appellant submitted into evidence a copy of the Board’s decision for fiscal year 2011 reducing the subject property’s assessed value of $34,400 to $25,500. The appellant also submitted into evidence property record cards for purportedly comparable “sheds” that had been assessed for less than the subject property’s building. Finally, the appellant argued, and the assessors did not contest, that the $6,000 value attributed to the well and septic should not have been included in the subject property’s valuation for fiscal year 2016.

For their part, the assessors submitted into evidence the requisite jurisdictional documents, the property record card for the subject property, and property record cards for other nearby properties. The Presiding Commissioner found that the nearby properties’ property record cards neither supported nor undermined the subject property’s assessed value.

Based on the evidence presented, the Presiding Commissioner found that the subject property had a fair cash value less than its assessed value for fiscal year 2016. The Presiding Commissioner afforded little weight to the appellant’s arguments, except with respect to the value attributed to the well and septic. Based on the entire record, the Presiding Commissioner found that the subject property’s fair cash value was $28,100 for fiscal year 2016. Accordingly, the Presiding Commissioner decided this appeal for the appellant and granted an abatement in the amount of $123.06.

**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 appellant to prove that the subject 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)). An assessment is presumed valid until a taxpayer sustains his burden of proving 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, pursuant to G.L. c*.*58A, § 12A**,** “the burden shall be upon the [assessors] to prove that the assessed value was warranted.” ***Finlayson v. Assessors of Billerica,*** Mass. ATB Findings of Fact and Reports 2007-531, 538.

In the present appeal, the appellant submitted into evidence the Board’s decision relating to fiscal year 2011, which the appellant argued was dispositive for fiscal year 2016. The fiscal year at issue in this appeal is five fiscal years remote from the Board’s earlier decision. Consequently, G.L. c. 58A, § 12A does not apply to this appeal and there is no shift in burden. Further, the five-year time lapse renders the Board’s earlier determination of little or no probative value for fiscal year 2016.

General Laws chapter 58A, § 12B provides, in pertinent part, that at “any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible.” “The introduction of ample and substantial evidence in this regard may provide adequate support for abatement.” ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-08 (citing ***Garvey v. Assessors of West Newbury***, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; ***Swartz v. Assessors of Tisbury***, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); *see* ***Turner v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-309, 317-18. The assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must also be adjusted to account for differences with the subject property. *See****Heitin v. Assessors of Sharon***, Mass. ATB Findings of Fact and Reports 2002-323, 334.

In the present appeal, not only did the appellant fail to establish the basic comparability of the “sheds” he presented for consideration, but he also failed to make adjustments for differences with the subject property.

However, the Presiding Commissioner gave substantial weight to the appellant’s argument that the $6,000 value attributed to the well and septic should not have been included in the subject property’s valuation for fiscal year 2016, particularly in light of the assessors’ having not contested the argument. The Presiding Commissioner, therefore, decided this appeal for the appellant, reduced the subject property's assessed value from $34,100 to $28,100, and granted an abatement in the amount of $123.06.

**THE APPELLATE TAX BOARD**

**By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**Clerk of the Board**