

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

KATHARINE P. STERLING

v.

**BOARD OF ASSESSORS OF
THE TOWN OF ARLINGTON**

Docket No. F338943

Promulgated:
March 11, 2021

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 Arlington ("appellee" or "assessors") to abate a tax on real estate located in the Town of Arlington, owned by and assessed to Katharine P. Sterling ("appellant") under G.L. c. 59, §§ 11 and 38 for the fiscal year 2019 ("fiscal year at issue").

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him in the decision for the appellee.

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

Benjamin Reeve, Esq., for the appellant.

Paul Tierney, Director of Assessments, for the appellee.

FINDING OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction and Jurisdiction

On January 1, 2018, the relevant valuation date for the fiscal year at issue, the appellant was the assessed owner of a 93,828-square-foot parcel of real estate ("subject parcel") improved with a single family residence ("subject home") located at 21 Valley Road in Arlington (together, "subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,842,600 and assessed a tax thereon, at a rate of \$11.26 per \$1,000, in the amount of \$20,747.68, plus a Community Preservation Act surcharge fee of \$294.33. The appellant timely paid the tax due without incurring interest.

In accordance with G.L. c. 59, § 59, the appellant timely filed an application for abatement with the assessors on January 28, 2019. The assessors granted a partial abatement on April 22, 2019, reducing the subject property's assessed value to \$1,835,700 ("adjusted assessed value"). Not satisfied with that reduction, on July 15, 2019, the appellant seasonably filed an appeal under the formal procedure with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellant introduced into evidence: comprehensive narratives, charts, and graphs regarding the assessors' assessment practices; photographs of the subject property; a contour map and fiscal year 2019 property record card for the subject property; comparisons to other wooded land parcels in Arlington; comparisons to residential properties in neighboring towns including – for fourteen properties – photographs of the site and fiscal year 2020 property record cards; information on four large woodland parks in Arlington and neighboring communities, including fiscal year 2020 property record cards; and tax bill payment and abatement documentation for the subject property.

The assessors presented into evidence jurisdictional documents and the subject property's property record card for the fiscal year at issue. The assessors did not introduce affirmative evidence of value, but pointed out that the assessed value of the subject parcel's primary one acre lot received a 25 percent decrease in value for ledge and an additional 15 percent decrease in value due to the overall size of the lot, while the balance of the land received a 75 percent reduction in value due to ledge. The assessors also stated that the subject parcel was the only two-acre residential lot in Arlington.

II. The Subject Property

The subject home is a stucco-exterior residence constructed around 1928. The property record card indicates that the subject

home has 4,137 square feet of living area, consisting of ten rooms, including five bedrooms, three full bathrooms, and a half bathroom. Other improvements include an attached garage, enclosed porch, and frame shed. The appellant contended that the subject home was located on only 25,000 square feet of land, and that the balance of the subject parcel was unbuildable without tearing down the house, due to its steep grades, unfavorable terrain, and lack of access. The appellant indicated that the subject home was in substantially the same condition as when she bought it, although even with repairs done from time to time, there remained various masonry issues, and repairs to the cracks in the stucco had left an exterior in need of re-coating.

Prior to the partial abatement granted by the assessors for the fiscal year at issue, the subject home was valued at \$519,200 and the subject parcel was assessed for a rounded total value of \$1,323,400, consisting of two amounts: (i) the value of a one-acre lot described as the primary "site" (\$1,319,051), based on a unit price of \$95 per square foot discounted by a total of 40 percent on account of ledge and size, plus (ii) the value of 1.154 acres of land described as "excess" (\$4,328), based on a unit price of \$15,000 per acre discounted by 75 percent on account of ledge.

III. The Appellant's Case

The appellant maintained that, together, the value of the subject home and the subject parcel (which represent the building and the land value, respectively) was \$1,320,286 for the fiscal year at issue. Although the appellant pointed out certain masonry and stucco issues with the subject home, her dispute was only with the assessed value of the subject parcel.

1. Valuation Standards

The appellant first asserted that Arlington had not adhered to recognized standards applicable to the appraisal of real property for tax purposes. Instead, she alleged that with respect to properties in Neighborhood 10, where the subject property is located, the assessors had with "improper and unlawful intent," on the basis of the sale prices of fifteen properties in Neighborhood 10 that sold in 2017, shifted the tax burden away from buildings and other improvements onto land, resulting in large increases in land values for the fiscal year at issue. Citing statistics relating to land price increases in the zip code where the subject property is located, the appellant stated that, on average, land values there had increased "on the order of 3-1/2%" far less than the increase to the subject parcel for the fiscal year at issue. Citing statistics published by the Lincoln Land Institute of Cambridge ("Lincoln Institute") and other sources, the appellant indicated that land values in Massachusetts had increased on

average by about 3 percent to 3.5 percent each year since the mid-twentieth century.

Moreover, according to the appellant, values of comparable residential land in the neighboring town of Lexington had increased by only approximately 4.5 percent for the fiscal year at issue – of particular note because, according to the appellant, Lexington was fourth in average home price rank in the Commonwealth, while Arlington was thirty-first. In support of this assertion, the appellant described the increase from fiscal year 2018 to fiscal year 2019 in the assessed land values of eight residential properties located in Lexington. All of these properties, for which property record cards were not introduced into evidence, were described by the appellant as improved with single-family residential homes in the same basic price range and “like enough” to the subject property, with land areas ranging from two acres to 2.48 acres.¹

The appellant provided two examples of what she described as anomalous results for the fiscal year at issue produced by Arlington’s application of “mass appraisal” factors to base rates. The appellant observed that at 24 Irving Street, located approximately half a mile from the subject property, the values of land and building for the fiscal year at issue did not increase in

¹ The appellant determined an average land value of around \$6.25 per square foot for these eight properties and stated that, applying that value to the subject parcel, the subject parcel’s indicated value was \$586,425.

concert with one another; instead the land value increased by 35.7 percent while the building value decreased by 33.5 percent. On the other hand, at 153 Newport Street, located about a quarter of a mile from the subject property, land that the appellant concluded had been sold for \$300,000 in 2014 was valued at \$415,300 for the fiscal year at issue, only 21 percent more than its fiscal year 2018 value. In neither case did the appellant offer evidence to establish that the properties at 24 Irving Street and 153 Newport Street, including land and building, were overvalued by the assessors or were comparable to the subject property.

The appellant also asserted that Arlington's selected primary lot size for the subject property of 43,560 square feet (one acre) was "per se incoherent, improper and illegal, and [led] to unlawful disproportion in assessment." The appellant stated that this measure had "no known relationship to any zoning requirement . . . [or] other statistical or physical premise."

The appellant further maintained that a statistical analysis of the assessed values of land in relation to size - *i.e.*, values per square foot - in Arlington and certain selected cities and towns in Massachusetts and Portsmouth, New Hampshire indicated that while values per square foot continue to decrease as properties increase in size until a leveling point is reached, in Arlington the land curve flattens much earlier than in other communities, such that fiscal year 2019 values per square foot for

properties comprised of 22,000 square feet or more remained static in Arlington at \$47.50 per square foot. The appellant maintained that Arlington's assessment practices did not reflect a "normal market land curve . . . [which] continues, rather than 'flattens.'"

Finally, the appellant maintained that a comparison of the assessed value of the 34.5-acre woodland park in Arlington next to the subject property with the assessed values of three town/city-owned woodland parks in Winchester, Lexington, and Medford, ranging in size from 28.9 to 52.7 acres, demonstrated that Arlington's assessment system produced non-market results. According to the appellant, "the average per acre assessed value for the other three towns is 2.31 percent of the Arlington per acre value."

2. Other Properties in Arlington

Taking into account the features and size of the subject property, the appellant concluded that there were no comparable properties that had been regularly bought and sold in the open market in Arlington relevant to this appeal. In fact, she observed that, apart from the subject property, there were only three residential parcels in Arlington with more than one acre of land, none of which was comparable to the subject property.

The appellant therefore focused on the assessed values of three parcels of vacant land in Arlington ranging in size from two acres to 6.41 acres with assessed values ranging, according to the

appellant, from \$2.45 per square foot to \$5.48 per square foot based on fiscal year 2018 assessed values.² Neither fiscal year 2018 property record card nor fiscal year 2019 property record card for these three properties was introduced.

The appellant stated that a 5.975-acre parcel located behind the Ottoson School, which she described as "reasonably physically close to the subject property," had been valued at \$1,425,000 for fiscal year 2018. The appellant determined the assessed value of the parcel for fiscal year 2018 to be \$5.48 per square foot, although she pointed out that the assessors had valued one acre of the parcel differently from the remaining square footage.

The largest parcel of land that the appellant compared to the subject parcel, described as "O Kipling Road," contained 6.41 acres, including approximately 50,000 square feet of wetlands. According to the appellant, the land had been valued at \$1,285,000 for fiscal year 2018 – *i.e.*, \$4.60 per square foot – and at \$1,524,000 for fiscal year 2019, only 18.6 percent higher than the prior year's assessment.

The appellant indicated that both the property behind the Ottoson School and the Kipling Road property had "very good street

² The appellant used fiscal year 2018 values for her purportedly comparable parcels of vacant land, stating that 2019 data was either unavailable for web access or "somewhat 'hit and miss'" and that 2019 values, when available, were "anomalous and untrustworthy."

and utilities access, and none of the challenges of topography or ground conditions” as the subject property.

The smallest of the three purportedly comparable parcels introduced by the appellant was an island, Elizabeth Island in Spy Pond, located about 165 feet from the shoreline. The island, comprised of 87,120 square feet of land, last sold in 2010 for \$250,000 to the Arlington Land Trust, and was described by the appellant as being “in the same area of Town as the subject.” The fiscal year 2018 property record card showed an assessed value of \$213,400, indicating an assessed value for fiscal year 2018 of \$2.45 per square foot. The appellant maintained that residential use of an island was not unknown in Massachusetts.

3. The Appellant’s Opinion of Value

Although the subject parcel is comprised of approximately 93,828 square feet, one acre of which the assessors have characterized as the primary site, the appellant argued that the “domestic area” consisted of only 25,000 square feet of land, leaving the balance of 68,828 square feet to be valued as “outer/woodland” area. The appellant, after first rating each of her three purportedly comparable Arlington parcels in relationship to the subject parcel, based on relative physical land type, topographical rating, view, location, access, facilities, and services, arrived at an adjusted per-square-foot value for each of them, which she then averaged to arrive at a value of \$2.58 per

square foot for the subject parcel's outer/woodland. Although the appellant recognized the distinct features of the island property, she concluded that consideration of it assisted with discerning "the market for land that is in practical effect development-inaccessible."

Applying a per-square-foot value of \$2.58 for the subject parcel's outer/woodland area, the appellant determined that 68,828 square feet of the subject parcel was worth \$177,576. To value the balance of the subject parcel, comprised of 25,000 square feet, the appellant increased the assessed value per square foot of the residential site for fiscal year 2018 (which she stated to be \$22.31) by 3.5 percent, to arrive at a value of \$577,336. Adding the assessed value of the subject home for the fiscal year at issue to these two land value amounts, the appellant determined the overall "component value" of the subject property to be \$1,274,112 for the fiscal year at issue. The appellant checked this number against an amount equal to the price that she paid for the subject property in July of 1981 (\$255,000) multiplied by what she computed to be the increase in single-family housing prices in the Boston area between then and the end of 2017 (a multiple of 5.358666805).³ In conclusion, the appellant averaged her resulting value

³ The appellant started with an index published by the Lincoln Institute, covering the period from the fourth quarter of 1984 to the first quarter of 2016, and made further adjustments to cover (i) the period from the first quarter of 2016 to the last quarter of 2017, and (ii) the period from July of 1980 to the last quarter of 1984.

(\$1,336,400) and her determined "component" value of \$1,274,112, to arrive at a "final value" for the subject property of \$1,320,286 for the fiscal year at issue.⁴

4. Neighboring Town Values

To support her determination of total land value, the appellant, noting "that fair comparables for the subject parcel can only be found in neighboring towns," provided written information on properties in three neighboring communities - eight in Lexington, four in Winchester, and two in Medford, although she did not rely on the Medford parcels, indicating that they were "better left behind." The appellant stated that the twelve parcels located in Lexington and Winchester had "more and less two acres"⁵ and were "much more like the subject parcel than any other property in Arlington." The appellant provided aerial and other photographs and 2020 property record cards for these properties and made some general observations about them.

From the property record cards, taking into account any land value adjustments made by the town, the appellant developed fiscal year 2019 land values per acre, based on assessed values ranging from \$507,000 to \$800,000 per acre in Lexington and from \$484,400

⁴ The actual average of the two values is \$1,305,286.

⁵ The twelve properties ranged in size from 2.00 acres to 2.77 acres in Lexington and from 1.690 acres to 2.464 acres in Winchester.

to \$815,000 per acre in Winchester.⁶ According to the appellant, multiplying the average per-acre assessed land value of her twelve comparable properties by the subject parcel's total acreage indicated a value for the subject parcel of \$579,894, while using the per-acre assessed land value of the most highly assessed of these comparable properties indicated a value for the subject parcel of \$771,314.

IV. The Board's Findings

The Board found that the appellant's various critiques of the assessors' assessment practices did not provide credible or persuasive evidence that the subject property was overvalued. The appellant did not provide a sufficient factual basis to support her opinions about primary residential lot size, improper percentage increases in land values in Arlington or other towns, or the appropriateness of the assessors' land valuation curve. Despite the volume of data submitted, there was no competent showing of how it related to the valuation of the subject property or, most importantly, whether the properties used to support her conclusions were comparable to the subject property.

The Board also found that the method applied by the appellant to value the subject property did not provide probative, credible support for her concluded value. In particular, the appellant's

⁶ The appellant based the per-acre assessed land value for two of her comparable properties in Winchester on the fiscal year 2020 assessed value of the land (rounded down in one case).

valuation methodology was fundamentally flawed from the outset because it failed to focus on the value of the subject property as a whole, addressing only the value of the subject parcel.

In addition, the appellant's approach to the valuation of the subject parcel was itself flawed. Without credible foundation, the appellant characterized only 25,000 square feet of the subject parcel as the residential site. The appellant's opinion of value for her chosen primary site was based on the mere conclusion that it had increased in value by 3.5 percent over its assessed value for the prior fiscal year, in reliance on unverified statistical information she offered into evidence. The appellant provided no credible foundation for this conclusion.

The appellant's determined value for the outer/woodland portion of the subject parcel was similarly not credible. To establish the value of this portion of her property, the appellant introduced into evidence three parcels of vacant wooded land located in Arlington, including an island. These parcels were fundamentally dissimilar to the subject parcel and therefore not sufficiently comparable to derive meaningful valuation evidence in this appeal.

The last step in the appellant's valuation methodology was likewise not probative. This step was based on an average of two flawed values – (1) her "component value" for the fiscal year at issue, consisting of the assessed value of the subject home plus

her determined land values, and (2) a statistically determined value for the subject property as a whole, which - without foundational basis - the appellant determined to be the price that she paid for it in July of 1981, multiplied by the increase in single-family housing prices in the Boston metropolitan area since then.

Finally, the Board found that the assessed value per acre of the appellant's twelve comparable residential parcels located in Lexington and Winchester provided no probative support for her overall land-component value because these parcels were located in different communities, and were not shown to be comparable to the subject property.

Thus, the Board found and ruled that the appellant failed to meet her burden of demonstrating that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in this appeal.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. The assessors are required to assess real estate at its fair cash value determined as of the first day of January preceding the start

of the fiscal year. 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).

A taxpayer has the burden of proving that the taxpayer's property has a lower value than that assessed. The burden of proof is upon the taxpayer to make out a right as a matter of law to an abatement of the tax. ***Schlaiker v. Assessors of Great Barrington***, 365 Mass. 243, 245 (1974) (citing ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The Board is entitled to presume that the valuation made by the assessors is valid unless the taxpayer proves the contrary. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (citing ***Schlaiker***, 365 Mass. at 245).

In appeals before the Board, taxpayers "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 appellant sought to expose flaws in the Town of Arlington's assessment practices, including its determination of

primary residential lot size, improper increases in land values, anomalous and non-market results, and flattening land curves. The appellant, however, failed to establish that she had a sufficient and competent factual basis for her conclusions concerning these issues. Although non-expert witnesses, such as property owners, may offer an opinion of the value of their property, they must establish sufficient familiarity with the subject matter of their testimony. See, e.g., *Menici v. Orton Crane & Shovel Co.*, 285 Mass. 499, 503 (1934) ("It is [the] . . . knowledge and experience [of an owner of real property], not the holding of the title, which qualify him to testify as to its value."). In the present case, the appellant did not show how the data she offered to critique the assessors' practices related to the value of her property; more specifically, how and why she arrived at her primary lot size and whether the percentage value increases, land value curves, and the other market observations she offered were based on properties that were comparable to the subject property.

Critically, the appellant focused on the value of the subject parcel alone rather than on the overall value of the subject property. She gave only a statistically determined value for the subject property as a whole – which the Board found to be without credible foundation – to support her determined "component value."

A taxpayer does not conclusively establish a right to abatement merely by showing that his or her land is overvalued.

"The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately." *Assessors of Brookline v. Prudential Insurance Co.*, 310 Mass. 300, 316-317 (1941); see *Hinds v. Assessors of Manchester-by-the-Sea*, Mass. ATB Findings of Fact and Reports 2006-771, 778. Although the component parts on which an assessment is laid are each open to inquiry and revision by the appellate tribunal when determining whether a property was overvalued, in abatement proceedings "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive." *Massachusetts General Hospital v. Belmont*, 238 Mass. 396, 403 (1921); see also *Buckley v. Assessors of Duxbury*, Mass. ATB Findings of Fact and Reports 1990-110, 119. Given her singular focus on the subject parcel, the appellant did not provide sufficient evidence to demonstrate that the subject property's assessed value was excessive.

Evidence of the assessed values of comparable properties may provide probative evidence of fair cash value (see G.L. c. 58A, § 12B; *John Alden Sands v. Assessors of Bourne*, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-07 (citing *Chouinard v. Assessors of Natick*, Mass. ATB Findings of Fact and Reports 1998-299, 307-308)). However, a taxpayer bears the burden of establishing that properties share "fundamental similarities" with the subject property, including age, location and size (see *Lattuca*

v. Robsham, 442 Mass. 205, 216 (2004)), and assessments must be adjusted to account for differences with the subject. See **Heitin v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2002-323, 334.

As discussed in the Board's findings of fact, the purportedly comparable properties offered into evidence by the appellant – located in Arlington, Lexington, and Winchester – did not share fundamental similarities with the subject parcel. Thus, the appellant's presentation of these properties did not provide competent, credible evidence of the value of the subject property.

Based on the foregoing, the Board found and ruled that the appellant failed to meet her burden of proving that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in the instant appeal.

THE APPELLATE TAX BOARD

By: /s/ Thomas W. Hammond
Thomas W. Hammond, Jr., Chairman

A true copy,

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