

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DOROTHY STOVALL

**v. BOARD OF ASSESSORS OF THE
TOWN OF WESTPORT**

Docket No. F343264

Promulgated:
June 9, 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 Westport ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Westport owned by and assessed to Dorothy Stovall ("appellant") for fiscal year 2021 ("fiscal year at issue").

Commissioner Good ("Presiding Commissioner") heard this appeal and issued a single-member decision for the appellee 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 appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

Dorothy Stovall, pro se, for the appellant.

Theodora Gabriel, 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, 2020, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed owner of a 23,700-square-foot parcel of real estate located at 43 Cornell Road in the Town of Westport ("subject property"). The subject property is improved with a single-family Cape-style dwelling that was built in 1950 ("subject dwelling"). The subject dwelling has a finished living area of 1,535 square feet containing eight rooms, including three bedrooms as well as one full bathroom and one half bathroom. There is also an attached one-car garage.

For the fiscal year at issue, the assessors valued the subject property at \$339,600 and assessed a tax thereon, at the rate of \$8.62 per \$1,000, in the total amount of \$2,927.35. The appellant timely paid the tax due without incurring interest. On January 21, 2021, the appellant timely filed an application for abatement with the assessors, which the assessors denied on March 29, 2021. On June 17, 2021, the appellant seasonably filed a petition with the

Appellate Tax Board ("Board").¹ Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The appellant and her son, David Stovall, testified at the hearing of this appeal. The appellant also offered into evidence numerous documents, including a written submission outlining the appellant's arguments, photographs of the subject property, the subject property's property record cards for fiscal years 2016 through 2022, and the property record cards for four purportedly comparable properties that are also located on Carroll Road.

In her written submission, the appellant focused on what she termed "shenanigans" with respect to the subject property's property record card. Specifically, the appellant noted that the subject dwelling's depreciation factor and effective year built changed in recent years, without explanation. She also maintained that the subject dwelling is a "Cape and a half," which is less desirable than a Cape and therefore should have a lower style multiplier. Lastly, the appellant questioned the assessors' failure to provide a detailed explanation for the denial of the appellant's abatement application and the assessors' closed-door-

¹The appellant's petition was stamped as received by the Board on July 7, 2021, but the petition was mailed in an envelope postmarked June 17, 2021. Pursuant to G.L. c. 58A, § 7, the Board considered the postmark date as the date of filing.

meeting policy with respect to discussions of abatement applications.

The appellant also submitted the property record cards for four purportedly comparable properties located on Cornell Road that sold between August 2019 and April 2021. These properties ranged in size from 24,000 square feet to 60,984 square feet and were improved with single-family dwellings that ranged in size from 912 square feet to 1,568 square feet. The purportedly comparable properties were assessed from \$266,400 to \$438,900 with sale prices that ranged from \$190,500 to \$442,000.

The assessors presented their case through the testimony of assessor Theodora Gabriel and the introduction of several exhibits, including the requisite jurisdictional documentation, a GIS map of the subject property, and a written summary of the changes made to the subject property's property record card and assessment for the fiscal year at issue. In her summary, the assessor noted that on March 23, 2021, an exterior inspection of the subject property was done, which led to an increase to both the subject dwelling's finished living area and the size of the garage.

The Presiding Commissioner found and ruled that the appellant failed to meet her burden of proving 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 the data

submitted by the appellant for the properties located on Cornell Road actually supported the subject property's assessment for the fiscal year at issue. The Presiding Commissioner further found that the appellant's focus on particular factors and components cited on the subject property's property record card and the assessors' manner of operations were not relevant to, and failed to provide any probative evidence of, the subject property's fair cash value for the fiscal year at issue.

Based on the record, the Presiding Commissioner found and ruled that the appellant failed to meet her burden of establishing that the fair cash value of the subject property was lower than its assessed value for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

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 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)).

In the present appeal, the Presiding Commissioner found that the appellant failed to meet her burden of proof in establishing that the subject property had a lower fair cash value than its assessed value for the fiscal year at issue. The Presiding Commissioner found that the data submitted by the appellant for properties located on Cornell Road actually supported the subject property's assessment for the fiscal year at issue.

Moreover, the Presiding Commissioner found that the appellant's complaints regarding entries on the property record card and the assessors' manner of operations were neither relevant to nor probative of fair cash value.

Based on the foregoing, the Presiding Commissioner issued a decision for the appellee.

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