COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

KATHARINE WALKERv.BOARD OF ASSESSORS OF
THE TOWN OF BEDFORDDocket No. F342573Promulgated:
March 17, 2023

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 and G.L. c. 58A, § 7 from the refusal of the Board of Assessors of the Town of Bedford ("appellee" or "assessors") to abate a tax on real estate located in Bedford and assessed to Katharine Walker ("appellant") under G.L. c. 59, §§ 11 and 38 for fiscal year 2021 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") considered this appeal and, in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20, issued a single-member decision for the appellee.

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.

Katharine Walker, a/k/a Katharine Walker Lawrence, pro se, for the appellant.

Matthew Lanefski, Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORT

This appeal was submitted on documentary evidence and written statements from the parties. Based thereon, the Presiding Commissioner made the following findings of fact.

I. Introduction and Jurisdiction

On January 1, 2020, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of a 9,288-square-foot parcel of real estate located at 48 Springs Road in Bedford ("subject parcel"), improved with a duplex residence ("subject home") and a detached garage (collectively, "subject property"). The other half of the duplex is known as 50 Springs Road and is not owned by the appellant. For the fiscal year at issue, the assessors valued the subject property at \$435,400 and assessed a tax thereon at the rate of \$13.53 per \$1,000, in the amount of \$5,890.96, exclusive of a Community Preservation Act surcharge of \$136.14. The appellant timely filed an application for abatement with the assessors on January 21, 2021. The application for abatement was denied by vote of the assessors on March 9, 2021, and a Denial Notice was sent to the appellant on April 9, 2021. Thereupon, on May 13, 2012, the appellant timely filed her Petition Under Formal Procedure with the Appellate Tax Board ("Board").

Although the appellant paid in full the tax due for the fiscal year at issue prior to the filing of her application for abatement, the second-quarter tax payment incurred interest because it was paid late. However, because the average of the real estate tax due on the subject property for the preceding three fiscal years was $$4,538.79,^{1}$$ the Board had jurisdiction to hear this appeal. See G.L. c. 59, § 64.

appellant's documentary evidence included: The color photographs of the interior and exterior of the subject property; seven abatement applications for fiscal years between 1999 and 2012 for which abatements were granted; letters from the appellant Bedford's officials various regarding water quality; to correspondence relating to the gas line servicing the subject property and her neighbor's property at 50 Springs Road; and plans indicating the boundary lines between these two properties.

In addition to their written statement and jurisdictional documents, the assessors submitted the subject property's property record card for the fiscal year at issue and black and white photographs of the interior and exterior of the subject property

¹ The three-year average of the taxes due of fiscal year 2018(\$4,289.63), fiscal year 2019 (\$4,624.13), and fiscal year 2020(\$4,702.62) was \$4,538.79.

obtained online - many the same as those presented by the appellant.

II. The Subject Home

The subject home is one side of a Federal Post and Beam duplex structure that was built in 1829, with additions dating to the 1980s. The property line that divides the structure into two units is a center brick wall, at the fore and aft of which are chimneys that service the two units.

The subject home contains 1,210 square feet of finished area, consisting of five rooms, including two bedrooms and two full baths. While one bath and the kitchen are indicated on the property record card to be in "good" condition, and the second bath is stated to be "average," the physical condition of the subject home is described as "fair," a depreciation rating of 41 percent is indicated, the two fireplaces are described as "poor," and a comment notes a depreciation/special amount for an uncompleted bath.

III. The Parties' Contentions

As a threshold matter, the appellant points to alleged procedural deficiencies relating to her appeal, including: the insufficiency of the vote to deny her abatement application (one Assessor and the Board of Selectman Liason were not present at the vote); a lack of inspection of the subject property; and the onemonth time lapse between the Denial and the issuance of the Denial Notice. These arguments, which the Presiding Commissioner found unavailing, are addressed in the Opinion below.

In the view of the appellant, the subject property's excessive valuation was evidenced by an "offer" for the property that accurately reflected its value. More specifically, on October 18, 2019, without the subject property's having been exposed to the market, an owner of property on Springs Road made an offer to buy the subject property for \$325,000, the details of which are not clear. The appellant acknowledges that the offer was not accepted.

The appellant also cites the poor condition of the subject home. According to the appellant, she purchased the subject property in November of 1998 based on erroneous building reports prepared by the seller's real estate agent and home inspector. Only later did she discover that the subject home was in need of substantial repairs. As a result, starting with fiscal year 1999, the appellant filed a series of abatement applications with the assessors in which she noted extensive interior and exterior deficiencies. According to the appellant, members of the "assessor's staff" commented that the house was "under construction" after property inspections in 2006, 2007, and 2008. Citing still-unfinished interior and exterior renovations, the appellant asserts that the subject home remained under

construction for the fiscal year at issue. However, by the relevant assessment date, significant improvements had been made to the interior of the subject home, including items that had been identified as "in need of attention" in the appellant's earlier abatement applications.

The appellant further complains of the "poor quality" of the water in the Town of Bedford, and points to actions taken by her neighbors, which she maintains negatively impacted the value of her property. These complaints were not substantiated, and no evidence was presented to quantify their claimed effect on the subject property's fair cash value.

Finally, the appellant argues that as a matter of law, her property tax should not have increased by more than 10 percent for the fiscal year at issue. However, this argument was not supported by legal authority.

The assessors, for their part, credibly maintain that, though the subject property had been given a "dilapidated" rating in earlier fiscal years, there was a change to "fair" for the fiscal year at issue to reflect improvements to the property. The "fair" condition rating allowed for deferred maintenance, some building components in need of repairs, rehabilitation, or updating, and somewhat diminished functional utility and overall livability.

In the opinion of the assessors, which the appellant did not dispute, the photographs of the subject property the assessors had "obtained online (Covid had curtailed interior inspections)," closely reflected the current condition of the subject property.

IV. The Board's Findings

On the basis of the evidence of record, the Presiding Commissioner found and ruled that the appellant failed to meet her burden of proving that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The Presiding Commissioner further found and ruled that the appellant failed to demonstrate prejudicial flaws with respect to the disposition of her application for abatement.

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

OPINION

I. Alleged Procedural Defects

As noted above, the appellant asserts that the Board of Assessors' vote on her application for abatement was flawed because one Assessor and the Board of Selectmen Liaison were not present at the meeting at which her application was denied. However, no evidence or legal authority was offered to support the appellant's assertion that the Board of Assessors failed to follow established procedures or applicable law when the two assessors present at the meeting approved the denial.

Likewise, the appellant maintains that the assessors violated established abatement procedures and precedent by failing to inspect the subject property during the pendency of her appeal. The Presiding Commissioner found this argument to be without merit. Assessors have a statutory right, but not an obligation, to inspect property that is the subject of an abatement application. See G.L. c. 59, § 61A. The assessors chose not to inspect the subject property, Covid having curtailed interior inspections, and the lack of an inspection did nothing to impede the appellant's ability prosecute her appeal. Curiously, the appellant's to own documentary evidence reflects her reluctance to allow an inspection of the subject property.

Finally, the appellant criticizes the fact that a month elapsed between the assessors' decision on her abatement application and the issuance of a denial notice. Assessors are required, within ten days after their decision on an application for abatement, to send written notice thereof to the applicant. G.L. c. 59, § 63. Where assessors fail to give notice of their denial within ten days, the Board has found that the date of the notice of abatement denial is ineffective for the purpose of determining when to commence the running of the three -month appeal period, but the abatement denial remains valid. See **Boston Communications Group**, **Inc. v. Assessors of Woburn**, Mass. ATB Findings of Fact and Reports at 2011-780, 784. In other words, assessors' inaction may extend the time for filing an appeal to the Board, but the denial is otherwise effective. In the instant case, the appellant filed her Petition Under Formal Procedure with the Board on May 13, 2021, and the timeliness of the appeal was not in question, *i.e.*, the assessors' failure to comply with the ten-day requisite had no negative effect on the appellant's appeal rights.

II. Valuation

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

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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 the instant case, the appellant argues that the fair cash value of the subject property for the fiscal year at issue was \$325,000, the sum another owner of property on Springs Road offered to pay for it in October of 2019, only a few months before the relevant assessment date. Although actual sales generally "furnish strong evidence of market value" they must be arm's-length transactions that fairly represent what a buyer on the open market is willing to pay for the property. *See Foxboro Associates v. Assessors of Foxborough*, 385 Mass. 679, 682 (1982). An offer for property that has not been exposed to the market does not satisfy the arms-length requirement.

The appellant also asserts that the assessors failed to take into account the poor condition of the subject home. However, photographs of the subject home submitted to the Board by both the appellant and the appellee, as well as the appellant's current and prior year abatement applications, indicate that by the assessment date for the fiscal year at issue, substantial improvements had been made to the subject home, warranting a change in the property's condition factor. Moreover, by characterizing the physical condition of the property as "fair" for the fiscal year at issue, the assessors recognized obvious deferred maintenance and the need for building component repairs, rehabilitation, or updating. In sum, the Presiding Commissioner found that the appellant provided virtually no evidence to establish that the assessors had failed properly to take into consideration the subject home's condition as of the relevant assessment date. See Gurvitch v. Assessors of Holyoke, Mass. ATB Findings of Fact and Reports 2011-568, 576 ("[T]here was no evidence indicating that the assessors failed to take its condition into consideration when valuing the subject property. . . . On the contrary, the evidence showed that the assessors gave the subject property a 35 percent depreciation rate . . . ").

External factors that the appellant asserts negatively impacted the value of her property, including neighbors' actions and Bedford's "poor water quality," were unproven. Moreover, the appellant failed to submit any evidence quantifying their claimed impact on the subject property's fair cash value. Accordingly, the Presiding Commissioner gave no weight to the appellant's arguments. See, e.g., Andersen v. Assessors of Falmouth, Mass. ATB Findings of Fact and Reports 2013-808, 819 (denying an abatement where taxpayer offered insufficient evidence to establish that proximity to a large wind turbine had a quantifiable negative effect on the subject property's fair cash value).

Finally, the appellant points to what she claims to be a tax increase in excess of that permitted under Massachusetts law *i.e.*, in excess of 10 percent of the property tax from the prior fiscal year. However, the appellant offered no legal authority in support of this claim.

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IV. Conclusion

On the basis of the evidence of record, the Presiding Commissioner 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. The Presiding Commissioner further found and ruled that the appellant failed to establish that the procedures followed by the assessors in respect of her application for abatement were deficient or prejudicial to her appeal.

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

THE APPELLATE TAX BOARD

By:/S/ Steven G. Elliott Steven G. Elliott, Commissioner

A true copy,

Attest: <u>/S/ William J. Doherty</u> Clerk of the Board