COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

YAN ZHANG	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF BEDFORD**
Docket No. F341318		Promulgated: April 19, 2022

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 Bedford ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Bedford owned by and assessed to Yan Zhang ("appellant") for fiscal year 2020 ("fiscal year at issue").

Commissioner Good heard this appeal and was joined in the decision for the appellee by former Chairman Hammond and Commissioners Elliott, Metzer, and DeFrancisco.

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.

Yan Zhang, *pro se*, for the appellant.

Matt Lanefski, assessor, for the appellee.

FINDINGS 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, 2019, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of real estate located at 12 Noreen Drive in the Town of Bedford ("subject property"). The subject property consists of approximately an acre of land improved with a Colonial-style, 3,680-square-foot house ("subject house") containing five bedrooms, four-and-a-half bathrooms, and a one-car garage. The subject house was built in 1959 and was originally a smaller, ranch-style structure. The appellant purchased the subject property in 2012 and began a major renovation with additions to the subject house in 2015.

The assessors valued the subject property at $833,500 for the fiscal year at issue and assessed a tax thereon at the rate of $13.18 per $1,000 in the amount of $10,985.53, exclusive of the Community Preservation Act surcharge of $290.03. The appellant timely paid the tax due without incurring interest.

The appellant filed an abatement application with the assessors on January 17, 2020. The assessors issued a denial notice dated May 14, 2020, indicating that they had denied the

abatement application on May 13, 2020, and that appeal to the Board must be filed within three months of this denial date. This notice was defective on several counts. Upon the failure of the assessors to take action prior to the expiration of three months from the filing of the abatement application, the abatement application was statutorily deemed denied pursuant to G.L. c. 59, § 64. Further, G.L. c. 59, § 63 required that the assessors send notice of their inaction within ten days of the deemed denial. Here, the deemed denial date was April 17, 2020, and so the assessors' notice dated May 14, 2020 fell outside the statutory period and also provided incorrect filing information to the appellant. Because of the assessors' failure to comply with G.L. c. 59, § 63, the Board found that pursuant to G.L. c. 59, § 65C the appellant was entitled to file her petition "within two months after the appeal should have been entered." This extended the filing date to September 17, 2020. Consequently, the appellant's petition filed with the Board on August 18, 2020 was timely. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

II. The appellant's case

The appellant offered into evidence a written statement, maps, building-value charts, and an analysis comparing the subject property's land and building values to other properties

in the area. She contended that the subject property's land value was excessive because it contains wetlands and a drain easement and that the subject property's building value was excessive because the subject house has a "choppy" layout. She also contended that because the subject property only has a small, one-car garage - unlike newer houses in the area that have two- or three-car garages – the assessment should be reduced by $80,000, the estimated cost to build a new garage. Her opinion of fair cash value for the subject property was $696,014.

To support her case the appellant referenced two nearby properties that were valued at $940,200 and $635,800 for fiscal year 2020 and that were respectively built in 2016 and 2019. She claimed that because the subject property suffered from land restrictions impacting usability and these two properties did not, the subject property's land value should be at least 20 percent less than the land values of these two properties per square foot. She proposed a similar 20 percent reduction in building value for the subject property when compared to these two properties on the basis that they featured superior garages and quieter environs.

The appellant also submitted charts with building-value comparisons between the subject property and three allegedly comparable properties for fiscal years 2015 through 2020.

Through these charts she sought to illustrate that the subject property was impacted by steeper increases in building value than the building values of these three properties. For instance, the subject property's building value increased from $129,500 in both fiscal years 2015 and 2016, to $540,000 in fiscal year 2017, while one of the comparable properties' building value increased from $326,600 in fiscal years 2015 and 2016 to $344,600 in fiscal year 2017.

III. The appellee's case

Apart from jurisdictional documents, the assessors offered the subject property's property record card and a sales-comparison chart of allegedly comparable properties that sold in 2018, with sale prices ranging from $850,000 to $979,250. These were the same three properties used by the appellant in her building-value charts. These properties were reasonably similar to the subject property.

The assessors also addressed some of the appellant's concerns, noting that prior to the appellant's filing for an abatement they had applied a 10 percent reduction due to the subject house's layout, plus a 5 percent reduction to recognize that the construction was incomplete. They also noted that the nearby property relied upon by the appellant that was valued at $635,800 was not assessed as complete for fiscal year 2020.

IV. The Board's findings

The Board found that the appellant failed to meet her burden of proof in establishing that the assessed value of the subject property was higher than its fair cash value for the fiscal year at issue. The two nearby properties selected by the appellant provided no meaningful comparison to justify a decrease in the subject property's assessed value. One of the properties was assessed as not complete and the other property was assessed at $100,000 more than the subject property. These facts did not aid the appellant's case. To the extent that the subject property might have a less functional layout than the two nearby properties, the Board found that the reduction of 10 percent (plus 5 percent for the portion of the subject property that was incomplete) by the assessors was sufficient.

Further, the appellant's building-value charts do not reflect the extensive renovation of the subject house, with additions in 2015, which account for the steeper increases in building value as compared to the three comparable properties. For land value, the assessors valued the primary lot and then assessed the remainder as undevelopable, which the Board found was appropriately reflective of the land's wetlands and drain easement limitations. The Board was not persuaded to engage in additional reductions because of these limitations or for the appellant's hypothetical garage.

Conversely, the Board found that the assessors' sales-comparison chart, without further adjustments, supported the assessed value of the subject property for the fiscal year at issue. The three properties included by the assessors were reasonably similar and all sold for more than the assessed value of the subject property.

Based upon the above and all the evidence of record, the Board found and ruled in favor of the appellee for the fiscal year at issue.

OPINION

I. Jurisdiction

In the absence of written consent of a taxpayer, a board of assessors must act "prior to the expiration of three months from the date of filing" of an abatement application, after which the abatement application "shall then be deemed to be denied." G.L. c. 59, § 64. "If the assessors fail to take action on such application for a period of three months following the filing thereof, they shall, within ten days after such period, send the applicant written notice of such inaction" and the "notice shall indicate the date of the decision or the date the application is deemed denied as provided in section sixty-four, and shall further state that appeal from such decision or inaction may be taken as provided in sections sixty-four to sixty-five B,

inclusive." G.L. c. 59, § 63. In the present appeal, the assessors failed to act on the abatement application within three months of the January 17, 2020 filing date. Accordingly, the abatement application was deemed denied on April 17, 2020. The assessors were required to send written notice of inaction within ten days of April 17, 2020. Instead, the assessors not only mischaracterized the deemed denial as a denial, they failed to issue a notice until May 14, 2020. This notice also provided the appellant with incorrect information regarding when she should file for an appeal with the Board, indicating that she had to file within three months of May 13, 2020, rather than three months from April 17, 2020. The assessors consequently did not comply with the provisions of G.L. c. 59, §§ 63 and 64.

Generally, an appeal must be filed with the Board within three months of a deemed denial. G.L. c. 59, § 65. However, where as here, the assessors failed to send written notice of their inaction within ten days of the deemed denial date, the Board may extend the deadline by two months pursuant to G.L. c. 59, § 65C. *See* ***NHP Properties Business Trust n/k/a CCP Properties v. Assessors of East Longmeadow***, Mass. ATB Findings of Fact and Reports 2020-366, 367-68 (citing ***Andersen v. Assessors of Falmouth***, Mass. ATB Findings of Fact and Reports 2013-808, 810-11; ***American House, LLC v. Assessors of***

Greenfield, Mass. ATB Findings of Fact and Reports 2005-39, 57-58).

In this case, the Board found that the appellant did not file her abatement application by the original due date of July 17, 2020 due to the incorrect information contained in the assessors' notice. G.L. c. 59, § 65C. Extension of the filing period by two months resulted in a filing deadline of September 17, 2020. Consequently, the appellant's petition was timely filed on August 18, 2020.

II. Valuation

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).

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 (1984) (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 appellant failed to expose flaws in the assessors' method of valuation and she also failed to introduce credible affirmative evidence of value. *See* ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."). The two nearby properties selected by the appellant provided no meaningful basis for a reduction in the subject property's assessed value, just as the appellant's building-value charts lacked critical consideration of the subject house's extensive renovation with additions that accounted for its steeper increase in value as compared to other properties. The assessors provided sufficient relief to the appellant through various reductions and the assessment of a portion of the land as undevelopable. Additionally, the

assessors' sales-comparison chart, without further adjustments, supported the assessed value of the subject property for the fiscal year at issue. The three properties included by the assessors were reasonably similar and all sold for more than the assessed value of the subject property.

Based upon the above and the evidence of record, the Board 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. Accordingly, the Board issued a decision for the appellee in this appeal.

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