NOTIFY

13

COMMONWEALTH OF MASSACHUSETTS

SUFFOLK, ss.

SUPERIOR COURT
Civil No. 25-3505-BLS1

HS 148SST, LLC[1]
Plaintiff

vs.

CITY OF BOSTON
Defendant

MEMORANDUM AND ORDER ON MOTION TO DISMISS

HS 148SST, LLC owns commercial property in Boston (the "City"). It filed this case as a class action alleging that for the past two fiscal years, the City has punitively increased its tax assessment on commercial property owners that sought tax abatements from the Appellate Tax Board ("ATB"). The City moves to dismiss under Mass. R. Civ. P. 12(b)(6). For the following reasons, the motion is allowed in part and denied in part.

BACKGROUND

A. Relevant Allegations[2]

Each year, the City assesses the "fair cash valuation" of real property in the City. G.L. c. 59, § 2A. In January of each year, the City notifies taxpayers of its annual assessment. An owner's property taxes are then determined each fiscal year ("FY") by multiplying the City's assessment of the property's "fair cash valuation" times the tax rate.[3] G.L. c. 59, § 38.

---

[1] Individually and on behalf of others similarly situated.

[2] The information set out here is taken from the Class Action Complaint for Declaratory, Injunctive, and Restitutionary Relief (Docket #2) and applicable statutes.

[3] For FY2024, the City's commercial tax rate was $25.27 per $1,000 in assessed value. For FY2025, the rate increased to $25.96 per $1,000. Complaint ¶¶ 25, 26. The City also

Separate from the notices of assessment, the City maintains a property record card ("PRC") for each parcel of taxable property in the City. The PRC contains the City's detailed assessment calculations. Other than the final assessed value, the information on the PRC does not appear on the annual notice of assessment. To view a PRC, a taxpayer must request a copy by mail or in person at City Hall. A third-party requesting a PRC must pay a $5 fee per PRC.

Plaintiff owns commercial property at 148 State Street in Boston (the "Property").[4] In recent years, the City's assessments of the Property have declined slightly, but not to the degree plaintiff alleges has actually occurred since the onset of the Covid-19 pandemic. Accordingly, in 2023, 2024, and 2025, plaintiff paid its property taxes and then timely applied to the City for an abatement in accordance with G.L. c. 59, § 59. The City denied the abatement applications. Plaintiff appealed its FY2024 assessment to the ATB.[5] That appeal is pending.

Upon review of its PRC, and the PRC of other similarly situated commercial taxpayers, plaintiff learned that the City "artificially inflated the assessed value of [commercial] properties, solely because the Plaintiff, and many other commercial property owners, had sought a tax abatement with the ATB in the prior fiscal year." Complaint ¶33. In particular, plaintiff's and other taxpayers' PRCs reflect that in FY2024 "the City added back to its assessment of the properties' fair cash value the entire amount by which the City estimated the properties had decreased in value since the prior year." Id. ¶40. In other words, the City inflated the final

---

adds a surcharge under the Community Preservation Act to each property tax bill. See G.L. c. 44B, §§ 3-7.

[4] The Property "is an 11-story, 64,500 square-foot, Class "B" office building, with retail space in the lobby and on the first floor, and with office space on the second through eleventh floors." Complaint ¶7.

[5] The parties do not dispute that plaintiff did not appeal the denial of its abatement application for FY2025 to the ATB.

assessed value of those commercial properties with open ATB appeals to match the properties' higher assessed value from the prior fiscal year (the "Add-Back Policy"). In FY2025, the PRCs that plaintiff examined indicate that approximately half the decreased value was added back for those with open ATB appeals.

PRCs for FY2024 for taxpayers affected by the Add-Back Policy include the notation "ATB Dispute," "Override. Open Appeal," or a similar notation below the line listing the value added back to the City's assessment. Certain PRCs for FY2025 for this subset of taxpayers also include similar notations. Plaintiff's FY2025 PRC does not include a notation about its ATB appeal from FY2024. Such taxpayers, including plaintiff, had "to reconcile the City's records to discover the excess assessment." Id. ¶46. The PRCs for FY2024 and FY2025 for commercial properties that did not file an ATB abatement appeal in the prior year indicate the City did "not add[ ] back any of its estimate of the property's lost value to the property's assessed value." Id. ¶47.

The Mayor of Boston and a City spokesperson have denied that the City employed an Add-Back Policy. However, the Chairman of the Board of Review of the City's Assessing Department has admitted "the City 'stabilized' the assessed value of those properties with open ATB appeals 'to align with' their assessed value in 'previous years,' 'until we can come to an agreement on what the fair market value is.'" Id. ¶48.

B. Procedural History

Plaintiff filed this case on December 17, 2025 as a putative class action on behalf of '[a]ll Boston taxpayers who own commercial property in Boston that has been declining in value since FY2023, and who have filed an appeal with the ATB in FY2023, FY2024, and/or FY2025, concerning the City's assessment of the property's fair cash value." It asserts claims for

injunctive and restitutionary relief (Count I) and a declaratory judgment (Count II). It also seeks monetary damages under 42 U.S.C. § 1983 (Count III).

The City now moves to dismiss all counts of the Complaint for failure to state a claim and for failure to exhaust administrative remedies. I first address plaintiff's equitable claims before addressing its count for damages.

DISCUSSION

I. Equitable Relief (Counts I and II)

The City argues that the court must dismiss Counts I and II because plaintiff has not asserted a claim for extraordinary tax relief in order to circumvent the ordinary requirement that a taxpayer must exhaust its administrative remedies through the abatement appeal process set forth in G.L. c. 59. Applying the familiar standard under Mass. R. Civ. P. 12, I disagree.[6]

It is of course true that a party ordinarily must exhaust its administrative remedies before seeking judicial relief. Uniformed Firefighters of Ludlow, Local 1840 v. Board of Selectmen of Ludlow, 29 Mass. App. Ct. 901, 902 (1990). This requirement applies in the tax abatement context. If a property owner claims it has been subject to an illegally assessed tax, an administrative remedy is available by applying for an abatement under G.L. c. 59, § 59, including by appealing an adverse determination to the ATB. Sears, Roebuck and Co. v. Somerville, 363 Mass. 756, 757-758 (1973); G.L. c. 59, §§ 59-74. See New England Legal Found. v. Boston, 423 Mass. 602, 607 (1996) ("For most challenges to a tax bill, the taxpayer must resort to the administrative scheme, first seeking an abatement from the local board of

---

[6] Under Mass. R. Civ. P. 12(b)(6), a complaint must be dismissed if its factual allegations do not suggest a plausible basis for relief. Iannacchino v. Ford Motor Co., 451 Mass. 623, 635-636 (2008); Fraelick v. PerkettPR, Inc., 83 Mass. App. Ct. 698, 699-700 (2013). In reviewing the adequacy of a complaint, I must accept the factual allegations as true and draw all reasonable inferences in the plaintiff's favor. Fraelick, 83 Mass. App. Ct. at 699-700.

assessors and then proceeding to the [ATB]."). The ATB must grant relief if it finds that a tax is unconstitutional, but it is not authorized to grant declaratory relief. Blue Nile, LLC v. Harding, 2019 WL 2606788 at * 2 (Mass. Super. May 14, 2019) (Kaplan, J.), citing Duarte v. Commissioner of Rev., 451 Mass. 399, 413-414 (2008).

Under limited circumstances, however, a taxpayer may seek direct recourse from the courts. For instance, equitable relief may be available if a municipality engages in an unconstitutional, "grossly nonproportional assessment scheme." Leto v. Board of Assessors of Wilmington, 348 Mass. 144, 148 (1964), citing Bettigole v. Assessors of Springfield, 343 Mass. 223, 236 (1961) ("Where every assessment has been made on a wrong basis, the defects in the scheme cannot be cured by the sporadic correction of individual assessments"). Whether such an action for equitable relief may proceed is a matter within the court's discretion. Sydney v. Commissioner of Corps. & Taxation, 371 Mass. 289, 293 (1976).

Leto describes the circumstances under which "extraordinary" equitable relief may be pursued without first exhausting administrative procedures. In particular, the facts should establish a deliberate and substantial violation of the requirement that property tax valuations be proportional; plaintiffs are directly, significantly, and adversely affected; ordinary abatement procedures will be seriously inadequate; and equitable relief is practicable and appropriate and warrant interference with normal tax assessment and collection processes. Leto, 348 Mass. at 148-149 & n.4. Additional "[f]actors weighing in favor of maintaining a declaratory action include that the issue is important or novel or recurrent; that the decision will have public significance, affecting the interests of many besides the immediate litigants; or that the case reduces to an issue of law without dispute as to the facts." DeMoranville v. Commissioner of Revenue, 457 Mass. 30, 34-35 (2010) (citation and internal quotations omitted). The factors do

not establish a "comprehensive formula . . . governing the exercise of discretion." Sydney, 371 Mass. at 294.

The facts alleged here satisfy the enumerated factors. Inflating a property owner's assessment, unrelated to the property's fair cash valuation, deliberately and substantially violates the constitutional and statutory requirement that assessments be strictly proportional. G.L. c. 59, §§ 2A, 37; Bettigole, 343 Mass. at 230, 236. Compounding this alleged illegality is the assertion that the policy has been implemented in retaliation for taxpayers' exercise of their protected right to petition for an abatement and appeal an adverse ruling to the ATB. See, generally, Sahli v. Bull HN Info. Sys., Inc., 437 Mass. 696, 702 (2002) ("the right to petition the government, including the courts, [is] one of 'the most precious of the liberties safeguarded by the Bill of Rights'"), quoting United Mine Workers v. Illinois Bar Ass'n, 389 U.S. 217, 222 (1967). That plaintiff was subject to an alleged additional $41,351 in tax liability under the Add-Back Policy qualifies as a direct, significant, and adverse effect.

An equitable action on these facts also promotes judicial economy. An alleged widely-applied unconstitutional policy, unrelated to individual property valuation processes and procedures, lends itself to resolution via a *single* case rather than relitigating the issue multiple times in individual abatement actions. Bettigole, 343 Mass. at 237. If discovery supports the allegation that the City assessed a punitive valuation on commercial properties whose owners sought a tax abatement, it would be appropriate for this court to make that purely legal ruling, with no need for the usual deference to the technical expertise of the ATB. See Uniformed Firefighters of Ludlow, Local 1840, 29 Mass. App. Ct. at 902-903. The facts needed to decide whether the City has implemented the alleged Add-Back Policy are focused and narrow, particularly compared to the range of facts and expertise involved in a typical tax appeal.

Finally, the Add-Back Policy allegedly impacts all commercial taxpayers in the City. Plaintiff alleges that at least 60 commercial taxpayers have been subject to the Add-Back Policy. Complaint ¶52. As importantly, the mere existence of the Add-Back Policy plausibly chills all commercial property owners from exercising their right to seek an abatement.

For all of these reasons, the motion to dismiss Counts I and II will be denied. See Coan v. Board of Assessors of Beverly, 349 Mass. 575, 578 (1965) (declaratory relief ordered); Bettigole, 343 Mass. at 238 (declaratory relief ordered where City implemented unconstitutional assessment procedure to multiple property classifications). Cf. Leto, 348 Mass. at 150 (equitable relief unavailable where plaintiff failed to allege "general scheme of intentional, serious, and nonproportional assessment"); Blue Nile, 2019 WL 2606788, at *3 (court declined to resolve matter equitably where "number of internet retailers affected . . . is relatively confined and the ruling would apply" to limited eight-month period).

At a minimum, some limited discovery is required to determine the existence and extent of the alleged Add-Back Policy before a final determination can be made about whether equitable relief is appropriate. See Sydney, 371 Mass. at 295 ("As the question is one of discretion in light of the total controversy, it will often be unwise or unsafe to attempt to decide it on the basis of the complaint alone").[7]

II. 42 U.S.C. § 1983 (Count III)

Plaintiff's federal civil rights claim under 42 U.S.C. § 1983 is based on the same factual allegations that the City illegally inflated its property valuation in retaliation for plaintiff

[7] The City argues about the class action aspect of this case and plaintiff's claim for restitution. I do not need to address either on the motion before me. Aronson v. Commonwealth, 401 Mass. 244, 255 (1987), is not dispositive of the issue of class certification, particularly prior to discovery and on the facts alleged, which differ markedly from those in Aronson.

exercising its constitutionally protected right to petition for a tax abatement. However, the Supreme Court has ruled that, because "federal law generally will not interfere with administration of state taxes," § 1983 may not be used to obtain relief in state court if a taxpayer may pursue adequate state-based remedies. National Private Truck Council, Inc. v. Oklahoma Tax Comm'n, 515 U.S. 582, 588 (1995). See New England Legal Found., 423 Mass. at 614 (and cases cited). This principle has been widely acknowledged across multiple jurisdictions. See, e.g., J.P. Alexandre, LLC v. Egbuna, 137 Conn. App. 340, 351 n.11 (2012); Kowenhoven v. County of Allegheny, 587 Pa. 545, 561-564 (2006).

Here, plaintiff has adequate remedies available to redress its over-assessment claim through the administrative abatement process and equitably as discussed above. See Flynn v. Hannaford, 2022 WL 884201 at * 8 (D. Mass. Jan. 3, 2022) (Kelley, M.J.) ("there are many cases in which Massachusetts [taxpayer] remedies have been deemed adequate") (and cases cited). Under these circumstances, plaintiff may not pursue an action under § 1983. See New England Legal Found., 423 Mass. at 615 (because plaintiff "had adequate State procedural avenues to bring its Federal law challenges to the property tax, . . . § 1983 would therefore not provide any relief"); Kowenhoven, 587 Pa. at 564 (§ 1983 claim properly dismissed; plaintiff had adequate remedy in equitable claim for due process violation in assessment methodology).

ORDER

Defendant's, City of Boston, Motion to Dismiss Plaintiff's Complaint (Docket #89) is **ALLOWED** with respect to Count III, but is otherwise **DENIED**.

Dated: May 11, 2026

Peter B. Krupp
Justice of the Superior Court