COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JEFFREY APPELSTEIN	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF MIDDLETON**
Docket No. F352671		Promulgated: August 12, 2026

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 Middleton ("appellee" or "assessors") to abate a tax on certain real estate located in the Town of Middleton owned by and assessed to Jeffrey Appelstein ("appellant") under G.L. c. 59, §§ 11 and 38 for fiscal year 2024 ("fiscal year at issue").

Chairman DeFrancisco heard this appeal. He was joined by Commissioners Good, Elliott, Metzer, and Bernier in the decision for the appellant.

These findings of fact and report are made at the request of the appellant pursuant to 831 CMR 1.34.

Jeffrey Appelstein, pro se, for the appellant.

Brad Swanson, Chief Assessor, and *Kate Davies*, Deputy Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2023, the valuation and assessment date for the fiscal year at issue, the appellant was the owner of a 1.15-acre improved parcel of land with an address of 7 Woodbury Lane in Middleton ("subject property"). For the fiscal year at issue, the appellee valued the subject property at $2,051,000 and assessed a tax thereon, at the rate of $11.79 per $1,000, in the total amount of $24,406.90, including the Community Preservation Act ("CPA") surcharge. The appellant timely paid the tax due without incurring interest.

On January 29, 2024, the appellant timely filed an abatement application with the appellee. On March 27, 2024, the appellee issued an "Offer to Abate Real Estate Value" ("Offer"), which proposed reducing the subject property's assessed value to $1,952,500, in return for an agreement by the appellant not to pursue further reductions with the Board.[1] The Offer expired on April 3, 2024, with the appellant refusing the Offer. By notice dated May 9, 2024, the appellee notified the appellant that the abatement application was deemed denied on that date. However, the abatement application was deemed denied by operation of law on April 29, 2024. *See* G.L. c. 59, § 64. Because the appellee failed to send written notice to the appellant within ten days of the deemed denial, the appellant was granted an additional two months to file an appeal with the Board. *See* G.L. c. 59, § 65C; *see also* ***Cardaropoli v. Assessors of Springfield***, Mass. ATB Findings of Fact and Reports 2001-913, 923-24. On July 22, 2024, the appellant seasonably filed an

[1] Although settlement discussions are generally inadmissible in proceedings before the Board, the assessors offered the Offer into evidence, without objection from the appellant.

appeal. Based on these facts and applicable law, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is improved with a single-family home classified as a Colonial-XL dwelling, built in 2014, and containing 5,037 square feet of above-ground living area that is comprised of eight rooms, including four bedrooms, as well as four full bathrooms and one half bathroom ("subject home"). Other amenities of the subject property include: 1,863 square feet of below-grade finished basement area with a recreation room; an attached garage; and a 24-foot by 41-foot vinyl swimming pool that was installed in 2017.

The original property record card for the fiscal year at issue indicated a grade of A- for the subject home. Upon the appellant's filing of an abatement application, the appellee amended the property record card to indicate a grade of B+ for the subject home as well as to increase the living area calculation from 4,862 square feet to 5,037 square feet. The net result of these changes was a reduced valuation from $2,051,000 to $1,952,500 for the subject property, which is reflected on its amended property record card for the fiscal year at issue.

The appellant presented his appeal through his testimony and the submission of documents, including his position statement and the property record cards for eight properties that he used for his comparable-assessment analysis. The appellant contended that the subject property was valued higher than his selected comparable properties despite those properties' superior features, including larger living areas, higher-end interior finishes, higher-quality Gunite pools, pool houses, and locations in more select neighborhoods.

The appellant's comparison properties varied in land size from 1.17 acres to 2.39 acres, living areas from 4,505 square feet to 6,085 square feet, and home grades from B+ to A. One comparison property had no pool, two comparison properties had a vinyl pool like the subject property, and the remaining five comparison properties had Gunite pools. Finally, four comparison properties had pool houses. These comparison properties' assessed values ranged from $1,697,900 to $2,085,200. The appellant opined that the subject property's assessed value of $2,051,000 was not in keeping with the assessed values of his comparison properties, as it was at the high end of these values despite its lower-quality finishes, lower-quality pool, lack of pool house, and location in a less select neighborhood.

The appellant explained that he did not accept the appellee's offer to settle for a valuation of $1,952,500, because his opinion of fair cash value based on his comparable-assessment analysis was between $1,720,000 to $1,760,000 for the subject property for the fiscal year at issue.

Chief Assessor Brad Swanson ("Assessor Swanson") appeared on behalf of the appellee. The appellee offered the requisite jurisdictional documents as well as various printouts of information for numerous purportedly comparable properties' sales and assessments, including the eight comparison properties cited by the appellant and all ten properties on Woodbury Lane. Assessor Swanson did not explain the similarities and differences between these properties and the subject property, nor did the appellee provide adjustments to their purportedly comparable properties' sale or assessment values to compensate for differences that affect fair cash value. Assessor Swanson testified that, based on their comparisons, the appellee had been willing to reduce the subject property's assessed value to $1,952,500.

The Board noted that the appellee's evidence revealed that, prior to the Offer and the amended property record card, the subject property had the highest assessed value of the ten properties on its street as well as one of only two properties there with the highest grade of A-. The Board further noted that the assessors did not challenge the appellant's testimony that several of the appellant's comparison properties that were assessed lower than the subject property were located in more select neighborhoods and/or had higher-quality finishes and amenities.

The Board ultimately found that the subject property was valued inconsistently high vis-à-vis the appellant's comparison properties, many of which were in more select neighborhoods and had higher-end finishes, including pool houses. After making appropriate adjustments to the comparison properties' assessed values, and considering the record in its entirety, the Board found that the evidence supported a fair cash value for the subject property of $1,875,000 for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant and ordered abatement in the amount of $2,095.79, which included the appropriate portion of the CPA surcharge.

OPINION

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 are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). "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)). 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellant introduced evidence of the assessed values of comparison properties to undermine the assessors' valuation of the subject property. General Laws c. 58A, § 12B provides that "[a]t any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible." The Board has found that "[t]he introduction of ample and substantial evidence in this regard may provide adequate support for abatement." ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-08 (citing ***Garvey v. Assessors of West Newbury***, Mass. ATB Findings of Fact and Reports 1995-129, 135-36; ***Swartz v. Assessors of Tisbury***, Mass. ATB Findings of Fact and Reports 1993-271, 279-80). The assessment values in a comparable-assessment analysis must be adjusted to account for differences between the comparable properties and the subject property. *See* ***Heitin v. Assessors of Sharon***, Mass. ATB Findings of Fact and Reports 2002-323, 334.

In the present appeal, the Board reviewed the properties offered by the appellant for comparison with the subject property. The Board found that the subject property was incompatibly assessed vis-à-vis these comparison properties, many of which had superior features and locations as compared with the subject property. After considering appropriate adjustments to the comparable properties' assessments to account for differences, the Board arrived at $1,875,000 as the fair cash value for the subject property for the fiscal year at issue.

In reaching its opinion of fair cash value in these appeals, the Board could accept those portions of the evidence that the Board determined had more convincing weight. ***Foxboro Assocs. v. Assessors of Foxborough***, 385 Mass. 679, 683 (1982); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981***); Assessors of Lynnfield v. New England Oyster House, Inc***., 362 Mass. 696, 702 (1972). The Board here evaluated the evidence before it, selected from among the various elements of value, and formed its own independent judgment of fair cash value. ***General Electric Co.***, 393 Mass. at 605; ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." ***Assessors of Quincy v. Boston Consol. Gas Co***., 309 Mass. 60, 72 (1941). In coming to its decision, the Board considered the features of the subject property in comparison with the comparable properties advanced by both parties, including its finishes, location, pool, and lack of pool house.

Accordingly, the Board issued a decision for the appellant and ordered abatement of $2,095.79, which included the appropriate portion of the CPA surcharge.

THE APPELLATE TAX BOARD

By: ________________________________
Mark J. DeFrancisco, Chairman

A true copy,

Attest: ________________________________
Clerk of the Board