

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**APPLETREE REALTY TRUST**

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

Docket No. F343093

Promulgated:  
June 12, 2025

This is an appeal 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 Abington ("assessors" or "appellee") to abate a tax on certain real estate owned by and assessed to Appletree Realty Trust ("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 in accordance with G.L. c. 58A, § 1A and 831 CMR 1.32.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.34.

*William K. Brown, Esq., for the appellant.*

*Jolanta Briffett, assessor, for the appellee.*

## **FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits entered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

### **I. Introduction and jurisdiction**

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 0.50-acre parcel of land located at 1212 Bedford Street in the Town of Abington ("subject property"). The subject property, an unpaved parcel described as a parking lot, abuts and has access to Route 18. To facilitate a project to widen Route 18 ("project"), the Commonwealth exercised permanent and temporary takings of portions of the subject property. The Commonwealth compensated the appellant for the permanent taking in July 2022 in the amount of \$214,000.

The assessors valued the subject property at \$209,400 for the fiscal year at issue. A tax was assessed thereon in the amount of \$16.48 per \$1,000, for a tax due of \$3,477.95, inclusive of the Community Preservation Act surcharge. The appellant failed to pay timely and incurred interest, but G.L. c. 59, § 64 does not preclude jurisdiction on the basis of interest if the tax due is \$5,000 or less. The appellant filed an abatement application on February 1, 2021, which was denied by the assessors on March 3, 2021. The appellant timely

filed a petition with the Appellate Tax Board ("Board") on June 3, 2021.<sup>1</sup> Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

## **II. The appellant's case**

The appellant claimed that it was entitled to a reduction in assessed value due to the inability to use/rent the subject property as a result of the taking.<sup>2</sup> Estimating that the project ran approximately four years, from 2018 to the end of 2022, the appellant alleged that the subject property was mainly impacted in 2020, 2021, and 2022 by the project.

The appellant contended that prior to the relevant time periods it rented the subject property to a landscaping company to store trucks and equipment, but that the project inhibited the continued rental because of work trucks, police details, storage of gravel and other materials continually encumbering the subject property as a result of the project. On its abatement application, the appellant asserted an opinion of value of \$110,000. During the hearing, the appellant provided no specific opinion of value and instead asserted that the subject

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<sup>1</sup> The appellant's petition was stamped as received by the Board on June 8, 2021, but the petition was mailed in an envelope postmarked June 3, 2021. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

<sup>2</sup> The Board's jurisdiction in this appeal was limited to the fair cash value of the subject property for the fiscal year at issue and not whether the appellant was compensated fairly for the permanent and temporary takings.

property had no intrinsic value on the relevant valuation date because its only value as a vacant lot was to rent it for storage or parking and the appellant was completely deprived of the ability to do so.

The appellant presented its case through the testimony of Vincent D'Andrea, the trustee of the appellant, and various documents, including a MassDOT drawing featuring the subject property; an affidavit from a nearby business owner dated January 17, 2024 ("2024 affidavit"); and a lease dated September 1, 2021 ("2021 lease").

The 2024 affidavit - from an individual named Yasmine Zakhary, identified as the owner of a business called Yaz's Table - stated as follows: "During the entirety of the reconstruction of Route 18 in Abington, I personally observed dump trucks, heavy construction equipment, trailers and material like piping, curb stones, storage of gravel, crushed stone constantly on the vacant lot owned by Appletree Realty Trust at 1212 Bedford St. Abington, MA."

The 2021 lease was entered into by and between Vincent D'Andrea, as the trustee of the appellant, as lessor, and an entity called Tree Services of New England, Inc., as lessee. The described "premises" pursuant to the 2021 lease was as follows: "The premises consists of Unit A office space, Highland Place, 3 Highland Road, Abington, Massachusetts, containing approximately

121 square feet of space, with one outside parking space. Lot A located across the street containing approximately 19,000 sq. feet, as depicted by the attached map." The "attached map" was not offered as part of the record.

### **III. The appellee's case**

The appellee presented jurisdictional documents, as well as a brief statement from assessor Jolanta Briffett, both verbally at the hearing and in writing.

### **IV. The Presiding Commissioner's findings**

Based on the evidence presented, the Presiding Commissioner found and ruled that the appellant failed to establish that it was entitled to an abatement.

Initially, the appellant provided no evidence to document the state of the subject property as of January 1, 2020, the relevant date of valuation in this appeal. The 2021 lease was entered into more than a year after the relevant date of valuation and did not clearly identify the subject property as part of the lease. Regardless, the 2021 lease contradicted the appellant's own assertions that the subject property was impacted by the project in 2020, 2021, and 2022, because Tree Services of New England, Inc. paid rent to the appellant for its use of the property.

The 2024 affidavit was likewise not probative, providing no way to discern any dates and times, and providing no way to

distinguish whether any of the trucks and other equipment present were on the subject property for use by the project or the landscaping company to which the appellant had leased the subject property.

Further, and critically, the appellant provided the Board with no quantifiable evidence of any diminution in value of the subject property due to the project, and thus it did not establish that the assessed value of the subject property exceeded the fair cash value of the subject property for the fiscal year at issue.

Accordingly, the Presiding Commissioner found and ruled that the appellant did not meet its burden of demonstrating that the subject property was overvalued for the fiscal year at issue and issued a decision for the appellee in this appeal.

#### **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 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)).

The 2021 lease and 2024 affidavit offered by the appellant failed to expose flaws in the assessors' method of valuation and failed to undermine the assessors' valuation. Further, the appellant provided the Board with no quantifiable evidence of diminution of value as a result of the project during the relevant time period or any time period. See **Fox v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2021-479, 483 (finding that "the lack of any quantifiable impact on the subject property's fair cash value was critically lacking").

In sum, the appellant offered neither persuasive evidence exposing errors in the assessors' valuation methodology nor affirmative evidence of value that undermined the assessors' valuation.

Accordingly, the Presiding Commissioner found and ruled that the appellant failed to meet its burden of proving that the subject property was overvalued for the fiscal year at issue and issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By:   
Patricia M. Good, Commissioner

A true copy,

Attest:   
Clerk of the Board