COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

TERRENCE J. CURRIER v. BOARD OF ASSESSORS OF
THE TOWN OF WEST TISBURY

Docket Nos. X308701, F341791, F342619 Promulgated: November 2, 2022

These are appeals originally filed under the Informal Procedure¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of West Tisbury ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in West Tisbury, assessed to Terrence J. Currier ("appellant") and his spouse under G.L. c. 59, §§ 11 and 38, for fiscal years 2019, 2020, and 2021 ("fiscal years at issue").

Chairman DeFrancisco heard the appeals. He was joined by Commissioners Good, Elliott, and Metzer in the decision for the appellant for fiscal year 2019 and in the decisions for the appellee for fiscal years 2020 and 2021.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.

¹ Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings for fiscal years 2020 and 2021 to the formal docket. See G.L. c. 58A, § 7A. The assessors did not elect to transfer the proceedings for fiscal year 2019, but the Appellate Tax Board ("Board") nonetheless heard all three appeals together.

Terrence J. Currier, pro se, for the appellant.

Ellen M. Hutchinson, Esq. for the appellee.2

FINDINGS OF FACT AND REPORTS

Based on documentary evidence and testimony submitted by the parties during the hearing of these appeals, the Board made the following findings of fact.

On January 1, 2018, January 1, 2019, and January 1, 2020, the respective valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of a 2.92-acre parcel of land improved with a single-family residence located at 225 Great Plains Road in West Tisbury ("subject property"). Jurisdiction information for the fiscal years at issue is summarized in the following chart:

Fiscal year	Assessed value	Tax amount ³ / Tax rate (per \$1,000)	Taxes timely paid?	Abatement application filed	Denial date	Petition filed with Board
2019	\$1,042,800	\$6,444.50 \$6.18	Y	01/24/2019	03/05/2019	05/13/2019
2020	\$1,113,800	\$6,760.77 \$6.07	Y	01/27/2020	05/18/20204	06/23/2020
2021	\$1,139,500	\$6,950.95 \$6.10	Y	01/26/2021	03/30/2021	04/16/2021

 $^{^{2}}$ Attorney Hutchinson filed an appearance on behalf of the appellee in Docket Nos. F341791 and F342619.

³ These amounts do not include a Community Preservation Act ("CPA") surcharge.

⁴ The appellant agreed in writing to an extension of time for the appellee to act on his abatement application. See G.L. c. 59, § 59.

Based on the information in this chart, the Board found and ruled that it had jurisdiction to hear and decide these appeals.

The subject property is improved with a single-family, woodframe, Cape Cod-style dwelling, built in 2004, with one and threequarter stories and an unfinished basement ("subject home"). The property record card in evidence for fiscal year 2021 indicates that the subject home has 2,791 square feet of living area comprised of six rooms, including four bedrooms, as well as three and one-half bathrooms. The subject home's first floor has an open floor plan with Brazilian cherry floors throughout. The kitchen features custom cabinets, granite counters, and stainless-steel appliances, while the living room has cathedral ceilings with skylights, extra-large windows, recessed lighting, and a woodburning-stove fireplace. The first-floor master bedroom suite includes double closets and a bathroom with a granite double vanity. The subject home's other amenities include central air conditioning, a mahogany farmer's porch with granite steps and columns at the front, and a screened-in porch at the rear.

The appellant purchased the property on December 21, 2015 for \$1,050,000. The appellant testified that \$5,000 of that purchase price was for personal property that was included in the sale, bringing the consideration for the real estate to \$1,045,000.

The appellant previously appealed the subject property's assessment for fiscal year 2018. See Currier v. Assessors of West

Tisbury, Mass. ATB Findings of Fact and Reports 2020-375. In that appeal, the subject property's original assessment was \$1,003,600, which the assessors abated to \$963,600 to compensate for water damage to the subject home caused by a burst pipe. In the fiscal year 2018 appeal, the appellant contended that the abatement did not compensate sufficiently for the water damage. Upon reviewing the evidence of record, the Board decided that appeal for the appellee, finding that the subject property's recent purchase price, reduced by the greatest total repair cost substantiated by the appellant, supported the assessed value as abated. Id. at 2020-381. The Board further found that the appellant's comparable-sales analysis was unpersuasive, as the appellant failed to adjust his comparable sales for differences between the purportedly comparable properties and the subject property. Id.

In the present appeals, the appellant again contended that, for fiscal year 2019, the subject property's assessed value did not sufficiently account for water damage still present at the subject property as of the relevant assessment date. The appellant testified that repair work commenced in March 2018 was not completed until November 2018. The Board found the appellant's testimony on this point to be credible. The appellant also submitted as evidence a statement from his insurance company detailing the insurance payment to compensate for the damage, which totaled about \$65,000.

The appellant additionally contended that, for all fiscal years at issue, the appellee overestimated the square footage of the subject home's living area. The appellant pointed out that the property record cards for the subject property for the fiscal years at issue each noted a different square-footage figure for gross living area, and that the figure had steadily increased since fiscal year 2018: 2,369 square feet for fiscal year 2018; 2,676 square feet for fiscal years 2019 and 2020; and finally, 2,791 square feet for fiscal year 2021. The appellant submitted a letter from a contractor he hired to measure the living area of the subject home. The contractor calculated a total living area of 2,521 square feet. The letter indicated that the contractor's figure was based on interior measurements.

Finally, the appellant cited a purportedly comparable property at 83 Skiffs Lane that he claimed supported a reduced building value for the subject property. The property at 83 Skiffs Lane is 2.5 acres and is improved with a single-family home, built in 2008, which the appellant claimed was essentially identical to the subject home but built a few years after the subject home by the same builder.

The appellant submitted into evidence the property record cards for 83 Skiffs Lane for the fiscal years at issue. The appellant contended that, because he believed the home at 83 Skiffs Lane to be nearly identical to the subject home, its assessed value

could be substituted for that of the subject home. The 83 Skiffs Lane property was valued at: \$1,130,200, with the home at \$628,200, for fiscal year 2019; \$1,184,300, with the home at \$678,600, for fiscal year 2020; and \$1,181,900, with the home at \$674,300, for fiscal year 2021. By comparison, the subject home was valued at \$699,800 for fiscal year 2019, at \$770,800 for fiscal year 2020, and at \$796,100 for fiscal year 2021. Substituting the assessed building value from his purportedly comparable property for the assessed building value of the subject property, the appellant arrived at the following total fair cash values for the subject property: \$905,545 for fiscal year 2019; \$1,021,600 for fiscal year 2020; and \$1,017,700 for fiscal year 2021.

The assessors cross-examined the appellant on the similarity of his purportedly comparable property. Some key differences between the subject home and the purportedly comparable property's home were the subject home's screened-in porch, which 83 Skiffs Lane lacked, and 83 Skiffs Lane's additional living space over its detached two-car garage, which the subject property lacked.

For their case, the assessors presented the requisite jurisdictional documents as well as valuation evidence and the testimony of Assessor Dawn Barnes ("Assessor"). The Assessor testified that the appellee had granted a \$40,000 abatement for fiscal year 2018 to compensate for water damage to the subject property but did not make an adjustment for fiscal year 2019. She

testified that, according to her memory, repair work was underway when she inspected the subject property in February 2018, although the appellant had maintained that the work to repair the water damage did not start until March 2018.

The Assessor then testified regarding the recorded changes to subject home's living-area measurements. She explained that when she inspected the property in February of 2018, she was focused on the water damage and did not at that time measure the subject home. Therefore, the property record card for fiscal year 2018 reflected the measurements from a building plan, not actual measurements of the subject home. For fiscal years 2019 and 2020, however, the Assessor testified that she measured the subject home herself, determining the living area by measuring the exterior of the home. For fiscal year 2021, the Assessor determined that one of her exterior measurements from fiscal year 2020 had been faulty. She testified that correcting this error resulted in an increase of 115 square feet to the subject home's living area.

The appellee also introduced into evidence guidelines from the Massachusetts Department of Revenue. These guidelines instruct boards of assessors to determine living area by using exterior measurements.

The Assessor next presented three comparable-sale analyses, one for each fiscal year at issue, with each analysis including three purportedly comparable sales. The Assessor applied

adjustments for features including but not limited to: land acreage; quality/condition; extra bathrooms; living area; and finished basement area. After adjustments, the sales yielded adjusted sale prices as indicated in the following chart:

Fiscal year	Range of adjusted-sale values	Subject property's	
	from comparable sales	assessment	
2019	\$1,003,600 - \$1,125,750	\$1,042,800	
2020	\$1,125,750 - \$1,183,910	\$1,113,800	
2021	\$1,053,200 - \$1,265,800	\$1,139,500	

As indicated in the above chart, the subject property's assessment fell within or below the range of adjusted-sale values for each fiscal year at issue.

Based on all the evidence presented, the Board first found that the appellant credibly established that as of January 1, 2018, the assessment date for fiscal year 2019, the water damage to the subject property was not remedied. The Board further found that the appellant credibly established that the cost to cure this defect was \$65,000. The Board thus found and ruled that, for fiscal year 2019, the appellant met his burden of proving that the subject property's assessment should be reduced by \$65,000 to reflect a fair cash value of \$977,800.

For fiscal years 2020 and 2021, the Board found that the subject property was no longer affected by the water damage as of the relevant valuation dates for those fiscal years. The Board further found that the comparable-sales analysis advanced by the appellee used sufficiently comparable properties that were

appropriately adjusted. The subject property's assessed values for fiscal years 2020 and 2021 fell below or within the ranges of those adjusted sale values.

Moreover, the Board found no evidence that the appellee miscalculated the square-foot living area of the subject home. The appellant challenged the appellee's calculations based on interior measurements of the subject home. However, as will be explained in the following Opinion, the recognized method of calculating living area is by exterior measurement of the structure. More importantly, as will also be explained in the Opinion, reliance on the value of the home cannot conclusively establish overvaluation of a property, because the relevant inquiry is whether the overall assessment is excessive.

Finally, the Board found that the appellant's comparable-assessment analysis, whereby he used one property - 83 Skiffs Lane - was inadequate to establish that the subject property's assessment was excessive. The appellant's method of swapping out the assessed value of the subject home for the assessed building value of 83 Skiffs Lane was simplistic and failed to consider any differences affecting fair cash value between his purportedly comparable property and the subject property, including lot size, location, and features like the subject property's screened-in porch.

In summary, the Board found and ruled that the appellant met his burden of proving a fair cash value that was less than the subject property's assessed value for fiscal year 2019. However, the Board found and ruled that the appellant failed to meet his burden of proving that the fair cash values of the subject property were less than the assessed values for fiscal years 2020 and 2021.

Accordingly, the Board issued a decision for the appellant for fiscal year 2019 and decisions for the appellee for fiscal years 2020 and 2021.

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 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).

Generally, the appellant has the burden of proving that the property 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 taxpayers . . . prov[e] 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, taxpayers "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)).

For fiscal year 2019, the appellant contended that the assessed value did not account for damage to the subject home caused by a burst water pipe. The Board found that the appellant presented credible evidence that, as of the assessment date for fiscal year 2019, the subject home was still impacted by water damage, and he also credibly established the cost to cure that defect. Therefore, the Board found and ruled that the appellant met his burden of proving a fair cash value for the subject property that was lower than its assessed value for fiscal year 2019. See, e.g., Hughes v. Assessors of Quincy, Mass. ATB Findings of Fact and Reports 2005-420, 428 (finding error where the assessors failed to consider certain defects in their assessment of a property). The Board thus found and ruled that the fair cash value for the subject property for fiscal year 2019 was \$977,800.

However, the Board found that the evidence of record established that the subject property was no longer impacted by

the water damage for fiscal years 2020 and 2021. For these fiscal years, the Board found that the appellant failed to expose errors in the assessors' method of valuation, specifically the appellee's measurement of gross living area. While the appellant advocated for internal room measurements, the Board has time and again accepted the assessing profession's established standard of measuring the structure's exterior. See, e.g., Lupacchino v. Assessors of Southborough, Mass. ATB Findings of Fact and Report 2008-1253, 1263-65 (citing The Appraisal Institute, The Appraisal of Real Estate 226 (12th ed., 2001)⁵ (defining "gross living area" as the "[t]otal area of finished, above-grade residential space; calculated by measuring the outside perimeter of the structure")).

More to the point, the appellant's focus on the square footage of the subject home did not advance his claim of a reduced fair cash value for the subject property, because it did not address whether the assessed value for the overall property — land and building — was excessive. "Under a petition for abatement the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive."

Mass. General Hospital v. Belmont, 238 Mass. 396, 403 (1921). See also Lang v. Assessors of Marblehead, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding that "'[t]he tax on a parcel of

 $^{^{5}\,}$ The current citation for this proposition is to the 15th edition, published in 2020, at page 199.

land and the building thereon is one tax' and the ultimate conclusion is whether 'that single assessment is excessive'" and that a "'taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but rather that the assessment including both components is excessive") (citations omitted).

The appellant also failed to advance sufficient valuation evidence to meet his burden. The appellant presented a comparableassessment analysis using one purportedly comparable property, 83 Skiffs Lane. General Laws c. 58A, § 12B provides in pertinent part that at "any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible." "The 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; Swartz v. Assessors of Tisbury, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see also Turner v. Assessors of Natick, Mass. ATB Findings of Fact and Reports 1998-309, 317-18.

However, the assessments in a comparable-assessment analysis, like the sale prices in a comparable-sales analysis, must be

adjusted to account for differences with the subject property that affect fair cash value. See Heitin v. Assessors of Sharon, Mass. ATB Findings of Fact and Reports 2002-323, 334. In the instant appeals, the appellant simply swapped the assessed building value of 83 Skiffs Lane for the assessed value of the subject home, without any adjustments for notable differences between the two properties, like the subject property's screened-in porch. Moreover, the appellant's approach ignored not just differences in the properties' homes but their overall differences, including differences in their land as well. See Mass. General Hospital, 238 Mass. at 403. The Board found that this simplistic approach lacked sufficient probative value for determining the overall fair cash value of the subject property.

By contrast, the Board found that the assessors presented a credible comparable-sales analysis that included properties sufficiently comparable to the subject property as well as appropriate adjustments for the differences between these properties and the subject property that impact fair cash value. See generally Graham v. Assessors of West Tisbury, Mass. ATB Findings of Fact and Reports 2007-321, 400 (citing McCabe v. Chelsea, 265 Mass. 494, 496 (1929)), aff'd, 73 Mass. App. Ct. 1107 (2008) (Rule 1:28 Decision).

In conclusion, the Board found and ruled that the appellant

advanced sufficient evidence to prove that defects at the subject

property supported a lower fair cash value than the subject

property's assessed value for fiscal year 2019. However, the Board

found and ruled that the appellant failed to meet his burden of

proving a lower value for the subject property than its assessed

value for fiscal years 2020 and 2021.

Accordingly, the Board issued a decision for the appellant

for fiscal year 2019, reducing the subject property's assessment

to \$977,800, and thus ordered abatement in the amount of $$413.75^6$

for fiscal year 2019. The Board issued decisions for the appellee

in fiscal years 2020 and 2021.

THE APPELLATE TAX BOARD

By:/s/ Mark J. DeFrancisco

Mark J. DeFrancisco, Chairman

A true copy,

Attest: /S/ William J. Doherty

Clerk of the Board

6 This amount includes the appropriate portion of the CPA surcharge.