

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**DAVID DURGIN AND DR. ANNA  
CHOJNACKI-DURGIN**

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

Docket No. F341050

Promulgated:  
December 17, 2021

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 Dudley ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Dudley owned by and assessed to David Durgin ("Mr. Durgin") and Dr. Anna Chojnacki-Durgin ("Dr. Chojnacki-Durgin") (collectively "Durgins" or "appellants") for fiscal year 2020 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard this appeal and issued a single-member decision for the appellee pursuant to G.L. c. 58A, § 1A and 831 CMR 1.20.

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

*David Durgin, pro se*, for the appellants.

*Jeffrey T. Blake, Esq. and Matthew V. Sirigu, Esq.* 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 Presiding Commissioner 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 appellants were the assessed owners of real property located at 68 Eagle Drive in the Town of Dudley ("subject property"). The subject property consists of a 2.88-acre parcel of land improved with a Colonial-style residence containing 3,136 square feet of living area, including four bedrooms, three bathrooms, and one half bathroom.

The assessors valued the subject property at \$439,200 for the fiscal year at issue and assessed a tax thereon at the rate of \$13.06 per \$1,000 in the amount of \$5,735.95. The appellants paid the tax due, but incurred interest. The appellants filed an application for abatement on January 23, 2020, which was deemed denied on April 23, 2020. The appellants filed a petition with the Appellate Tax Board ("Board") on July 22, 2020.<sup>1</sup> The appellee filed an emergency motion to dismiss with the Board on April 27, 2021, contending that the appellants paid their second quarter tax bill more than three months late, incurring interest in the

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<sup>1</sup> The appellants' petition was stamped as received by the Board on July 28, 2020, but the petition was mailed in an envelope postmarked July 22, 2020. Under G.L. c. 58A, § 7, the Board used the postmark date as the date of filing.

amount of \$51.54. The Board denied the appellee's motion on the basis that the average of the taxes assessed for the three prior fiscal years - which is deemed to be the tax due for purposes of the three-year average provision of G.L. c. 59, §§ 64 and 65 - was less than \$5,000.

## **II. The appellants' case**

In addition to the testimony of Mr. Durgin, the appellants submitted a brief with two exhibits: (1) a Uniform Residential Appraisal Report for fiscal year 2018 prepared by Lawrence R. Jeznach ("Appraisal Report"), a Massachusetts-licensed real estate appraiser who was not present to testify in this appeal; and (2) a compilation of sales search results and property record cards for seventeen Colonial-style homes sold in the Town of Dudley between January 2017 and March 2020 ("Sales Compilation").

Relying upon isolated quotes from a February 2019 Town of Dudley Board of Assessors meeting posted on YouTube, the appellants alleged that the appellee was displeased with the appellee's appraisal software. The appellants contended that as a result "any flaws in the system could carry over to the" assessment of the subject property.

The appellants noted that Dr. Chojnacki-Durgin's father and uncle built every house in the subject property's neighborhood - the Rocky Hill subdivision - with the exception of three, and

that her father and uncle had filed a lawsuit against the assessors' Chairman Conrad Allen for allegedly connecting roads into the subdivision without proper easements.

The Sales Compilation submitted by the appellants focused on seventeen Colonial-style properties, with sale prices ranging from \$420,000 to \$609,900. The appellants noted differences between these properties and the subject property, but did not include any adjustments for the differences.

To determine their contended fair cash value for the fiscal year at issue, the appellants relied upon a series of retroactive hypothetical values starting with fiscal year 2018. The Appraisal Report valued the subject property at \$382,000 for fiscal year 2018. Although documents in the record established that the assessed value for fiscal year 2018 was \$503,000, the appellants nonetheless "believe the Principal Assessor originally assessed the property at \$379,600" for fiscal year 2018.<sup>2</sup> The appellants claimed that the assessments for the entire Town of Dudley increased by roughly 4.5 percent between fiscal years 2018 and 2019; by roughly 3.8 percent between fiscal years 2019 and 2020; and by roughly 6.3 percent between fiscal years 2020 and 2021. Using their alleged value of \$379,600 for fiscal

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<sup>2</sup> According to correspondence from Assessor Lisa Berg included with the appellants' petition, the appellants' first and second quarter preliminary tax bills for fiscal year 2018 were based upon the subject property being 80 percent complete. Upon inspection in the interim, the subject property was found to be 100 percent complete, which was reflected in the third and fourth quarter increased assessed value and tax bill amounts.

year 2018 and the Appraisal Report's value of \$382,000 for fiscal year 2018 as starting points, the appellants applied these average assessment increases as follows:

	Percentage increases using the appellants' perceived value for fiscal year 2018 rather than the actual assessed value of \$503,000	Percentage increases using the Appraisal Report value for fiscal year 2018
FY2018	\$379,600	\$382,000
FY2019 (roughly 4.5 percent increase)	\$396,700	\$399,200
FY2020 (roughly 3.8 percent increase)	\$411,800	\$414,500
FY2021 (roughly 6.3 percent increase)	\$437,800	\$440,600

Significantly, the appellants also admitted their "successful abatement" for fiscal year 2019 that reduced the assessed value of the subject property from \$526,300 down to \$424,700, a reduction of \$101,600. The appellants did not file an appeal with the Board for a further reduction of the \$424,700 abated value for fiscal year 2019.

Based upon their calculations as reflected in the chart above, the appellants requested a fair cash value in the range of \$411,800 to \$414,500 for the fiscal year at issue, rather than the assessed value of \$439,200.

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

In addition to the testimony of Assessor Lisa Berg, the appellee submitted into evidence jurisdictional documents and the property record card for the subject property. Assessor Berg

testified that for the prior fiscal year - fiscal year 2019 - the assessors visited and inspected the subject property and reduced the initial assessed value by \$101,600.

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

Based upon the record in its entirety, the Presiding Commissioner found that the appellants failed to meet their burden of proof in establishing that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue.

The Presiding Commissioner found that the appellants relied upon hearsay, as well as speculative offerings that provided little if any support for a reduction in the assessed value for the fiscal year at issue.

The quotes concerning the appellee's software displeasure and the unrelated lawsuit brought by Dr. Chojnacki-Durgin's relatives were neither relevant to nor probative of fair cash value. The Sales Compilation similarly offered little probative value. While noting differences between the allegedly comparable properties and the subject property, the appellants made no actual value adjustments for any differences.

The appellants did not present Lawrence R. Jeznach, the preparer of the Appraisal Report, as a witness in this appeal. Consequently, the Presiding Commissioner found opinions

contained in the Appraisal Report, including the opinion of value for fiscal year 2018, to be unsubstantiated hearsay.

The Presiding Commissioner was not persuaded by the appellants' erroneous version of the subject property's assessment history for prior fiscal years not before the Board. The appellants did not contest the assessment of \$503,000 for fiscal year 2018. They sought and received a reduction in the assessment for fiscal year 2019, from \$526,300 down to \$424,700, but did not seek a further reduction at the Board for fiscal year 2019.

The Presiding Commissioner also found flaws with the appellants' percentages, derived by calculating assessment increases for all properties in the Town of Dudley, rather than calculating increases of comparable properties. Even if the appellants' percentages were credible, applying their methodology of using a 3.8 percent increase from fiscal year 2019 to the fiscal year at issue - using the fiscal year 2019 assessed value of \$424,700 - results in a fair cash value of \$440,838.60, which is higher than the assessed value for the fiscal year at issue.

Based upon the above and the record in its entirety, the Presiding Commissioner issued a decision for the appellee in this appeal.

## OPINION

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 that 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 this appeal, the Presiding Commissioner found and ruled that the appellants provided no credible evidence to establish that the fair cash value of the subject property was less than the assessed value for the fiscal year at issue. The appellants relied upon speculation, unadjusted sales comparisons, and hearsay. See ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 402-03 (holding that the taxpayers "did not . . . provide a coherent and detailed comparable sales analysis" and "[c]onsequently, the Board found and ruled that the appellants' comparable assessment methodology was spurious and any values derived from it were hollow and unfounded"), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (decision under Rule 1:28); ***Scharf & Schultz v. Assessors of Brookline***, Mass. ATB Findings of Fact and Reports 2015-232, 240, *order denying motion to file late notice of appeal aff'd*, 90 Mass. App. Ct. 1120 (2016) (decision under Rule 1:28) ("[N]either appraiser testified at the hearing nor was available for cross-examination by the appellee or for questioning by the Board. The Board therefore considered their opinions contained in the appraisal reports to be unsubstantiated hearsay."); ***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." ).

Moreover, the appellants introduced no persuasive evidence exposing flaws in the assessors' method of valuation, the quotes concerning the appellee's displeasure with appraisal software (as well as the unrelated lawsuit brought by Dr. Chojnacki-Durgin's relatives) being neither relevant to nor probative of fair cash value.

Based upon the above and the record in its entirety, the Presiding Commissioner found and ruled that the appellants failed to establish that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

**THE APPELLATE TAX BOARD**

By: /s/ Steven G. Elliott

Steven G. Elliott, Commissioner

A true copy,

Attest: /s/ William J. Doherty

Clerk of the Board