

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**ALAN LEVIN**

**v.**

**BOARD OF ASSESSORS OF  
THE TOWN OF NORTON**

Docket No. F339630

Promulgated:  
February 17, 2023

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 Norton ("assessors" or "appellee") to further abate a tax on a certain parcel of real estate located in the Town of Norton, owned by and assessed to Alan Levin and Kelly Quatruopolo, for fiscal year 2020 ("fiscal year at issue"). This appeal was brought by Alan Levin ("appellant").

Chairman DeFrancisco heard this appeal and was joined in the decision for the appellee by Commissioners Elliott, Good, and Metzger.

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.

*Alan Levin, pro se, for the appellant.*

*Denise Ellis, Director of Assessing, for the appellee.*

## **FINDINGS OF FACT AND REPORT**

Based on testimony and exhibits offered into evidence by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

### **I. Introduction and Jurisdiction**

On January 1, 2019, the relevant date of valuation and assessment for the fiscal year at issue, the appellant was the assessed co-owner of real property located at 205 John B. Scott Boulevard in the Town of Norton ("subject property").

The subject property consists of a 2.850-acre parcel of land improved with a Colonial-style, single-family residence built in 2006 and consisting of 3,334 square feet of living area,<sup>1</sup> featuring eight rooms, including four bedrooms, with two full bathrooms, one half bathroom, and a deck off the rear of the building. A detached garage was recently constructed. According to the property record card, the only permit issued since the original construction permit was issued in 2005 was the permit issued in 2018 for construction of the garage. The appellant purchased the subject property in 2008 for \$435,000 as a bank-owned foreclosure sale.

The assessors valued the subject property at \$810,500, (comprised of land valued at \$181,700; building valued at \$587,000; and garage valued at \$41,800) for the fiscal year at issue. A tax

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<sup>1</sup> For the fiscal year at issue, the living area was initially measured to be 3,509 square feet. Upon application for abatement, the assessors adjusted the measured area to 3,334 square feet.

was assessed thereon at a rate of \$14.80 per \$1,000 in the amount of \$11,995.40. The appellant timely paid the tax due without incurring any interest. The appellant filed an application for abatement on January 7, 2020, for the fiscal year at issue. The assessors granted a partial abatement as shown on their notice of revised assessment issued on January 29, 2020. The revised assessment corrected the measurement of the living area from 3,509 square feet to 3,334 square feet and allowed for a 2% functional discount due to an issue with windows in one room, thereby reducing the building value to \$553,700. The total assessed value of the property was thereby reduced to \$777,200, and the tax assessed was reduced to \$11,502.56. Not satisfied with the reduction in value, the appellant seasonably filed a petition with the Board on February 10, 2020. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

## **II. The Appellant's Case**

The appellant argued for a reduction in the assessed value of the subject property from \$777,200 to \$600,000 for the fiscal year at issue based on the following. He agreed with the assessed land value of \$181,700, but he contended that the fair cash value of the building was \$400,000, rather than the assessed value of \$553,700 (previously adjusted from the original assessed building value of \$587,000). Furthermore, the appellant contested the assessed value of \$41,800 for the newly constructed detached

garage, advocating for a reduction to \$18,300. Notably, the appellant focused his analysis of property value by contesting the assessed values of portions of the subject property (the building and the garage) rather than focusing on the assessment of the subject property as a whole.

The appellant presented his case through his testimony and submission of his self-prepared valuation analysis packet, which included multiple MLS listings as well as pages printed from the Town of Norton's website listing the assessed values, addresses, square footage, as well as limited additional detail of over 150 properties throughout the town. The appellant primarily focused on one purportedly comparable sale and three purportedly comparable assessments in support of his position that the assessed value of the building portion of the subject property exceeded its fair cash value. Although two of these properties are located on the same street as the subject property (203 and 174 John B. Scott Boulevard), no information was provided regarding the distance of the other two purportedly comparable properties (located at 11 and 3 Forest Lane) from the subject property or the character of those other neighborhoods relative to the subject property's neighborhood.

The appellant did not introduce property record cards for any of the cited properties, although the assessors did introduce property record cards for the subject property as well as for the

neighboring property at 203 John B. Scott Boulevard, which the appellant had introduced as a comparable assessment. Without the submission of property record cards, detailed information on three of the four purportedly comparable properties was lacking, thus limiting the Board's ability reliably to compare their assessed values with the assessed value of the subject property. Moreover, the appellant failed to make adjustments to any of the purportedly comparable properties for differences between them and the subject property.

The appellant also argued that the assessed value of the detached garage at \$40,800 exceeded its fair cash value, which he believed to be \$18,300. In support of his argument, the appellant presented a construction invoice and building permit related to the construction of the detached garage. The invoice for the construction of the garage was dated January 3, 2019, showing a non-itemized "total labor and materials" cost of \$24,260. The building permit, dated June 15, 2018, listed the estimated construction cost of the garage to be \$24,000.

Without offering detailed property information to allow for a meaningful comparison with the purportedly comparable properties, and without offering any adjustments, the appellant perfunctorily concluded that \$600,000 was the fair market value for the subject property.

### **III. The Assessors' Case**

In addition to the testimony of Denise Ellis, Director of Assessing, the assessors submitted jurisdictional documents as well as property record cards for fiscal years 2017 through 2021 for the subject property and property record cards for the fiscal year at issue for properties located at 201 through 207 John B. Scott Boulevard. Ms. Ellis' testimony focused on attempting to differentiate the subject property from the purportedly comparable properties offered by the appellant by suggesting that the age and size differences of the properties cited by the appellant made them unreliable comparable properties with respect to the subject property.

In addition, the assessors offered two purportedly comparable sales from 2018 in support of the assessed value of the subject property. Ms. Ellis referred to MLS listings for the properties and did not introduce property record cards for those properties, thus providing insufficient information to substantiate their use as comparable properties to the subject property. Moreover, like the appellant, the assessors failed to offer any adjustments to the purportedly comparable sales in relationship to the subject property.

Through her testimony, Ms. Ellis also called into question the reliability of the appellant's invoice for the detached garage, questioning the fact that the invoice was not itemized and

testifying that an invoice would typically itemize costs for materials as well as labor. Ms. Ellis also testified that, based on her review of relevant cost manuals and her experience as an assessor, the cost of construction of a garage would be expected to be higher than that shown on the invoice. The assessors asserted that the invoice was therefore not probative of the value of the garage.

The assessors concluded that the subject property was properly assessed at \$777,200 and noted that the assessment had already been abated to the extent that was justifiable.

#### **IV. The Board's Findings**

Based on the record in its entirety, the Board found and ruled that the appellant failed to meet his burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue. The appellant made no adjustments to any of the purportedly comparable properties to account for differences between those properties and the subject property; thus, those properties failed to serve as persuasive evidence in establishing the fair market value of the subject property.

The one property for which the Board was provided detailed information in the form of a property record card was the neighboring property located at 203 John B. Scott Boulevard. The building there was larger than that situated on the subject

property, and it was valued at \$156 per square foot versus \$166 per square foot for the building on the subject property. The difference of \$10 per square foot in assessed value was not significantly different from the abated assessed value of the subject building at \$166 per square foot. Moreover, the appellant failed to take into account the principle that, everything else being equal, as size increases, unit values generally decrease. Thus, the Board found that the neighboring property did not provide persuasive evidence of overvaluation of the subject property.

With respect to the assessed value of the detached garage, the Board found that the invoice was deficient in that it lacked the itemization of materials and labor needed to afford it substantial weight. Furthermore, the Board found the assessor's testimony to be credible in stating that, based on Ms. Ellis' review of cost manuals and her experience, the cost of construction of a garage would be expected to be higher than that reflected on the invoice. The Board therefore found that this evidence was unreliable in establishing the fair cash value of the garage.

Furthermore, the appellant's individual building and garage analyses failed to establish how the assessed value of the subject property as a whole exceeded its fair cash value. The relevant question is not whether the building and the garage values in isolation are excessive, but rather whether the overall assessment is excessive.

Based on the above and the record as a whole, the Board 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 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 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)).

In the present appeal, the appellant failed to present sufficient reliable or credible proof of overvaluation. The appellant did not attempt to make any adjustments for any differences between the selected properties and the subject property, including for economies of scale. See **Silvestri v. Assessors of Lowell**, Mass. ATB Findings of Fact and Reports 2012-926, 935 ("Purportedly comparable properties used in a comparable-sales or comparable-assessments analysis must be adjusted for differences with the subject property. ... Without appropriate adjustments the values assigned to the purportedly comparable properties do not provide reliable indicators of the subject property's fair cash value.") (citations omitted); **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); **Lewis v. Assessors of Lowell**, Mass. ATB Findings of Fact and Reports 2015-182, 187 ("[P]er-square-foot sale prices typically decline with increases in living area.").

The appellant also failed to establish how the assessment, as a whole, was excessive. The appellant focused on the individual building value and the garage value but failed to demonstrate how the individual components taken together contributed to the overall assessment exceeding fair market value for the fiscal year at issue. See ***Lang v. Assessors of Marblehead***, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding 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”) (citation omitted).

Based on the record before it, the Board found and ruled that the appellant failed to establish that the fair market value of the subject property was less than its assessed value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellee in this appeal.

**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