COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JASON MALONEY	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF IPSWICH**

Docket No. F310131

Promulgated: September 26, 2025

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 Ipswich ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Jason Maloney ("appellant") for fiscal year 2023 ("fiscal year at issue").

Commissioner Elliott heard this appeal. Chairman DeFrancisco and Commissioners Good, Metzer, and Bernier joined him in the decision for the appellant.

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

Jason Maloney, *pro se*, for the appellant.

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

FINDINGS OF FACT AND REPORT

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

On January 1, 2022, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the owner of a single-family condominium unit situated on a 3,000-square-foot parcel of land of which the appellant has exclusive use, located at 2 Plum Sound Road in Ipswich ("subject property").

For the fiscal year at issue, the appellee valued the subject property at $1,261,000 and assessed a tax thereon, at the rate of $12.23 per $1,000, in the amount of $15,422.03. The appellant timely paid the tax due without incurring interest. On January 25, 2023, the appellant timely filed an abatement application with the appellee. On March 27, 2023, the appellee granted a partial abatement, reducing the subject property's assessed value to $1,185,900. Not satisfied with that reduction, on June 14, 2023, the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is part of a condominium complex that consists of 167 units located on the peninsula of Little Neck in Ipswich. The units are of varying sizes and conditions, and most were originally designed as fishing cabins and then seasonal cottages. The Little Neck condominium complex is served by a common tight-tank waste treatment plant that requires pumping several times a week during the off season and usually twice a day during the peak season, from May to August. Common amenities for the condominium complex include a basketball court, soccer field, baseball field, pickleball court, clubhouse with postal boxes, a children's playground, and a dock with moorings that are owned by the town and leased to the condominium residents.

The subject property is a one-and-three-quarter story, wood-frame, cottage-style dwelling that was constructed in 1920, with a partial, unfinished basement and contains a total finished area of 1,328 square feet, which is comprised of six rooms, including three bedrooms, as well as one full bathroom and one three-quarter bathroom. The subject property also includes two side decks and a roof deck. The subject property is equipped partially with electric mini-split heaters and baseboard heating. The subject property's condition was rated as good on the original property record card for the fiscal year at issue but was downgraded to average upon the appellant filing an abatement request with the appellee, resulting in the partial abatement.

The Little Neck peninsula extends from the Great Neck neighborhood and is bound by the Ipswich River, Neck Creek, and Ipswich Bay. Each house on Little Neck has a water view, but there are varying ranges of view obstruction. The subject property has unobstructed views of the Ipswich River.

The appellant presented his case through his own testimony and that of his wife, Kira Kay, as well as the submission of documents. The appellant testified to his belief that the subject property would be considered a tear-down structure in the open market, as it is outdated in its furnishings and layout and further, as it lacks full insulation and full heating, it is merely seasonal and cannot be used year round. The appellant also cited condominium restrictions that were in effect at the time of assessment, stating that any expansion of the Little Neck condominium properties would require approval of any abutters whose water views would be affected by the expansion. The appellant opined that these restrictions made expansion of the subject property virtually impossible. The appellant further testified that the subject property is on a sloping plot, with its basement below street level, which results in basement flooding during heavy rainstorms. Finally, the appellant testified that the subject property was built precariously close to the street, and in fact, has been hit a few times by passing cars and trucks, as evidenced by photographs reflecting damage to the subject property.

The appellant completed a sales-comparison analysis using sales of properties both from the Great Neck as well as Little Neck communities. The appellant emphasized his opinion that the subject property was similar to some of the comparison properties in that, in his opinion, the subject property would be considered a tear down by a potential buyer. Other comparison properties, the appellant argued, were far superior to the subject property yet the subject property's assessed value was not consistent with the sales prices obtained for these properties on the open market. The appellant also cited six properties on Great Neck for a comparable-assessment analysis, arguing in similar fashion that the subject property was inferior to the comparison properties and yet was assessed at a rate inconsistent with these comparison properties. Making no adjustments to his comparison properties' sale prices or assessed values, the appellant derived an opinion of fair cash value for the subject property of $888,000 for the fiscal year at issue.

Next, the appellee presented its case in chief and offered the testimony and appraisal report of Mark Tyburski, whom the Board qualified as an expert witness in the field of real estate valuation. Mr. Tyburski presented an appraisal report for the subject property as well as an addendum. The appraisal of the subject property was part of an appraisal that included eight other properties in Little Neck. Mr. Tyburski testified that he made exterior inspections of many comparison properties on Little Neck and was provided with interior photographs taken by the appellee.

The addendum to Mr. Tyburski's report included an extensive analysis regarding the location of the Little Neck properties, including the subject property, and included maps coded by color with several categories for waterfront and water view with varying types of views and indicating which bodies of water. Mr. Tyburski ranked the subject property in the highest appeal category for view, which in Mr. Tyburski's opinion greatly enhanced its fair cash value.

Mr. Tyburski performed a comparable-sales analysis using four comparison properties located on Little Neck, two of which were the same as used by the appellant in his comparable-sales analysis. The sale properties ranged in size from 1,032 square feet to 1,703 square feet of living area, and they sold from July 2020 to August 2022. Mr. Tyburski applied multiple adjustments for categories including: date of sale; water view (which considered the level of obstruction as well as the direction of the view); age and condition of improvement; gross living area as well as the number of rooms, bedrooms, and bathrooms; and extra features. These four sales thus yielded adjusted sale values from $1,180,025 to $1,356,040. Mr. Tyburski's opinion of the subject property's fair cash value based on these adjusted sale values was $1,230,000, thus supporting the subject property's assessed value as abated.

The Board found that the value of the subject property resulted primarily from its location on Little Neck, particularly considering the subject property's location and water view, which were amongst the best on Little Neck. The Board thus found that the appellant's comparison to properties on Great Neck had no persuasive value. Instead, the Board reviewed the two Little Neck properties relied upon by both parties for their comparable-sales analysis, finding them to be appropriate for comparison to the subject property.

The Board found persuasive the appellant's argument that, despite its location on Little Neck and its coveted views, the dwelling's proximity to the street was a significant negative factor that impacted the subject property's fair cash value.

Based on a review of the evidence presented by both parties, the Board found that $1,070,000 reflected the fair cash value of the subject property for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant granting abatement in the amount of $1,417.46.

OPINION

Assessors are required to assess real estate at its fair cash value as of the first day of January preceding the fiscal year at issue. G.L. c. 59, § 38. Fair cash value is defined as the price upon which a willing buyer and a willing seller will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). An appellant has the burden of proving that property has a lower fair cash 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)).

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 instant appeal, the appellant presented a comparable-sales analysis and a comparable-assessment analysis. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 399-400 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929), *aff'd*, 73 Mass. App. Ct. 1107 (2008)). Assessments of comparable realty can likewise be used as probative evidence of fair cash value. G.L. c. 58A, § 12B ("[a]t any hearing relative to the assessed fair cash valuation or classification of property, evidence as to 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 found that the properties on Great Neck offered by the appellant were not sufficiently comparable to the subject property to have persuasive value and thus disregarded these comparable-sale and comparable-assessment properties. The Board instead relied upon the parties’ Little Neck comparable properties.

The Board found persuasive the appellant’s testimony that, despite the subject property’s coveted views, its dwelling’s location precariously close to the street was a detriment to the subject property’s fair cash value. Based on this testimony, as well as its own view of the subject property and consideration of the Little Neck comparable sales submitted by both parties, the Board determined that an adjustment to the subject property’s assessed value was warranted.

Considering the evidence before it, the Board thus determined that the subject property’s fair cash value for the fiscal year at issue was less than its assessed value as abated. In reaching its opinion of fair cash value in these appeals, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation. Rather, 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). In evaluating the evidence before it, the Board selected 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).

Having considered the record in its entirety, the Board found and ruled that the subject property's fair cash value for the fiscal year at issue was $1,070,000.

Accordingly, the Board issued a decision for the appellant ordering abatement in the amount of $1,417.46.

THE APPELLATE TAX BOARD

By: ______________________________
Mark J. DeFrancisco, Chairman

A true copy,

Attest: ______________________________
Clerk of the Board