

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**YESUGEY OKTAY and
SHIRLEY McMAHON OKTAY**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF DUXBURY**

Docket No. F337322

Promulgated:
May 6, 2020

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 Duxbury ("appellee" or "assessors") to abate a tax on a certain improved parcel of real estate located at 16 Seabury Point Road in the Town of Duxbury (the "subject property") owned by and assessed to Yesugey Oktay and Shirley McMahon Oktay ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Commissioner Rose heard this appeal. Chairman Hammond and Commissioners Good, Elliott, and Metzger joined him in the decision for the appellee.

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

Yesugey Oktay, pro se, for the appellants.

Stephen Dunn, Director of Assessing, for the appellee.

FINDINGS OF FACT AND REPORT

The appellants contended that the subject property was overvalued for the fiscal year at issue. Their case consisted of Yesugey Oktay's testimony coupled with the introduction of one exhibit which was a compilation of items, including: a description of the subject property with deeds, plans, and maps; a statement of nine reasons why the assessed value of the subject property should be reduced; a copy of excerpts from Duxbury's zoning bylaws; copies the subject property's property record cards for several fiscal years; print-outs of certain valuation pages for the subject property and two others from Vision Appraisal Services' online database; and a copy of an excerpt from the assessors' summary of assessed properties in Duxbury.

In support of the assessment, the assessors offered the testimony of Stephen Dunn, the town's Director of Assessing and a licensed Massachusetts real estate appraiser, and introduced into evidence the necessary jurisdictional documents, along with Mr. Dunn's "Report." His Report contained: a description of the subject property, including pictures, copies of its property record card, a copy of its most recent deed, and a copy of the

subdivision plan; a discussion of the easements affecting the subject property; a chart depicting changes in the assessed values of properties located on the subject property's street; pictures of the location of the subject property's driveway; copies of various documents relating to area sales; and lastly, a summary of the assessors' arguments supporting the subject property's assessed value for the fiscal year at issue.

Based on this evidence and reasonable inferences drawn therefrom, the Board made the following finding of fact.

On January 1, 2018, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of the subject property. For assessment purposes, the subject property is identified on map 101 as block 962, lot 001. At all relevant times, the subject property's parcel consisted of an approximately 0.92-acre lot with a rolling yard sloping down on two sides to Bay Road and Seabury Point Road. The parcel is improved with a 2,629-square-foot, seven-room, antique, Cape Cod-style home with three bedrooms, two bathrooms, and numerous upgrades. The home has an attached two-car garage and several additional amenities, including: a fireplace; a large brick patio; an ocean view, albeit with obstructions as noted by the appellants; and a 654-square-foot, three-room, one-

bedroom, detached cottage with an older kitchen, a three-quarters bathroom, and a small screened-in porch.

For the fiscal year at issue, the assessors valued the subject property at \$771,200 and assessed a tax thereon, at the rate of \$14.68 per thousand, in the amount of \$11,321.22.¹ The components of the subject property's assessment are identified below.

House Assessment	\$ 274,700
Cottage Assessment	\$ 52,800
Land Assessment	\$ 440,600
Outbuildings Assessment	\$ 3,100
TOTAL ASSESSMENT	\$ 771,200

Jurisdiction

On or about December 28, 2018, Duxbury's Treasurer/Collector sent out the town's real estate tax notices for the fiscal year at issue. In accordance with G.L. c. 59, § 57C, the appellants paid the tax assessed on the subject property without incurring interest. On January 3, 2019, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors, which they denied on March 5, 2019. Prior to the assessors' denial of their abatement application, the appellants filed, on February 28, 2019, a Petition Under Formal Procedure with the Appellate Tax Board (the

¹ The town also assessed a Community Preservation Act surcharge in the amount of \$98.53.

"Board").² Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

Merits

The appellants argued that the assessors had overvalued the subject property by not properly considering the effects on value of: the location of the subject property; its susceptibility to traffic and noise; its obstructed ocean view; the grade of the house and condition of the cottage; the existence of certain easements on the subject property; errors and flaws in the subject property's property record card; and its land assessment compared to two purportedly comparable properties' land assessments.

With respect to location, traffic, and noise, the appellants argued that the subject property should have a lower land assessment because it is located on the corner of Seabury Point Road and Bay Road, an area that is more heavily trafficked and hence noisier than that of other properties with a Seabury Point Road location. Regarding the easements, the appellants argued that the easements restrict the appellants' use of portions of the subject property. In addition, the appellants argued that the

² Prematurity in filing a petition to the Board is not a bar to its jurisdiction. See *Becton Dickinson and Company v. State Tax Commission*, 374 Mass. 230, 234 (1978); *Main Street Property, Inc. v. Assessors of Wayland*, Mass. A.T.B. Findings of Fact and Reports 2014-65, 66 n. 2.

assessment does not reflect the effect of how their water view has diminished over the years because of vegetation growth and new construction. As for construction details, the appellants argued that the assessors erred in their grading of the subject home on the subject property's property record card and erred in certain other respects and details, as well. With respect to the cottage, the appellants argued that the assessors misconstrued its style, flooring, foundation, and sanitation system.

Based on these contentions, the appellants requested a \$178,720 decrease in the subject property's assessed value from \$771,200 to \$592,480. The below table summarizes how the appellants calculated this reduction.

OVERALL ASSESSED VALUE	\$ 771,200
LESS:	
Location (10% x \$440,600 assessed land value)	(\$ 44,060)
Traffic & Noise (5% x \$440,600)	(\$ 22,030)
Water Easement (5% x \$440,600)	(\$ 22,030)
Electric & Telephone Easements (5% x \$440,600)	(\$ 22,030)
Water View (10% x \$440,600)	(\$ 44,060)
Construction Details (5% x \$327,000 assessed house value)	(\$ 16,380)
Cabin (10% x 81,300 assessed cabin value)	(\$ 8,130)
TOTAL REDUCTION	(\$ 178,720)
FAIR CASH VALUE	\$ 592,480

Finally, the appellants also argued that the percentage increase of the subject property's assessment over prior fiscal years was excessive when compared to other properties in the area.

In support of the assessment, Mr. Dunn testified that, as part of the abatement process, the assessors and he inspected the subject property. They also considered the effect on the subject property's value of easements and a recently released right-of-way, as well as possible errors on the subject property's property record card. They further reviewed recent sales and assessments of properties in the area.

Based on their analysis of these factors, Mr. Dunn and the assessors determined that the subject property's total assessment did not exceed the subject property's fair cash value. They also concluded that the land component's assessment of \$440,600 accurately captured its value notwithstanding the subject property's obstructed water view, location on both Bay and Seabury Point Roads, and the higher traffic and noise levels associated with Bay Road. They further determined that, like similarly situated properties, the water and utility easements had a negligible impact on the appellants' use and enjoyment of the subject property and hence its value. Moreover, while the appellants recommended "reducing" the value of the home's assessment to \$310,620 and the cottage's assessment to \$73,170, those components were already assessed at \$274,800 and \$52,500, respectively, well below the

appellants' recommendations. Lastly, Mr. Dunn and the assessors asserted that the comparable-assessment data from properties in the area revealed that the subject property's total assessment had increased less than the other properties' average increase over prior fiscal years and the sales-comparison data supported the subject property's total assessment.

In consideration of all the evidence, the Board found that the appellants failed to demonstrate that the subject property was overvalued for the fiscal year at issue. In particular, the Board found that the appellants did not show that the subject property's total assessment or even those of its component parts were excessive. The Board found that the comparable-sales and comparable-assessment information in the record supported the subject property's total assessment. Moreover, the Board found that the assessments associated with the subject property's component parts already captured any potential diminution in value associated with the subject property's location, traffic and noise, easements, obstructed water view, improvements, and possible errors in the property record card. The Board credited Mr. Dunn's testimony that any adverse effect on the subject property's value because of the easements was negligible, and further found that even

the appellants apparently agreed that the assessments associated with the house and cottage were not excessive. Accordingly, the Board found that the subject property's total assessment did not exceed its fair cash value.

On this basis, the Board found that the appellants failed to meet their burden of establishing that the subject property was overvalued for the fiscal year at issue and, therefore, decided this appeal for the appellee.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. The assessors are required to assess real estate at its fair cash value determined as of the first day of January preceding the start of the fiscal year. G.L. c. 59, §§ 2A and 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).

The burden of proof is upon the taxpayers to make out their right as a matter of law to abatement of the tax. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). The taxpayers must show that the assessed

valuation of the subject property was improper. See **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 691 (1982). The assessment is presumed valid until the taxpayers sustain their burden of proving otherwise. **Schlaiker**, 365 Mass at 245.

In appeals before this 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. v. Assessors of Lynn**, 393 Mass. 591, 600 (1984) (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellants tried to show that the assessed value of the subject property exceeded its fair cash value by demonstrating that the assessed values of the various components comprising the total assessment were excessive. The Board found and ruled that the assessments associated with the subject property's component parts already captured any potential diminution in value associated with its location, traffic and noise, easements, obstructed water view, improvements, and possible errors in the subject property's property record card. The Board further found and ruled that the assessors

demonstrated that the increase in the subject property's assessment from previous fiscal years was actually less than the average increase in the assessments of other properties in the area and recent sales of similar properties supported the subject property's total assessment.

A taxpayer does not conclusively establish a right to abatement merely by showing that his land or building is overvalued. "The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately." **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 316-317 (1941); **Hinds v. Assessors of Manchester-by-the-Sea**, Mass. ATB Findings of Fact and Reports 2006-771, 778. In abatement proceedings, "the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Buckley v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Report 1990-110, 119; **Jernegan v. Assessors of Duxbury**, Mass. ATB Findings

of Fact and Report 1990-39, 49; **Everhart v. Assessors of Dalton**, Mass. ATB Findings of Fact and Reports 1985-49, 54. In the instant appeal, the appellants primarily focused on the assessments of the component parts of the total assessment and did not show that those parts or the subject property's total assessment was excessive.

"The board [is] not required to believe the testimony of any particular witness but [may] accept such portions of the evidence as appear to have the more convincing weight." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the board." **Cummington School of the Arts, Inc. v. Assessors of Cummington**, 373 Mass. 597, 605 (1977).

Based on its findings and the application of the foregoing legal principles, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. The Board, therefore, decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: Thomas W. Hammond, Jr.
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: William J. Doherty
Clerk of the Board