

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**PETER J. PAPPAS**

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

Docket Nos. F336904, F336905,  
F336906, F336907

Promulgated:  
July 26, 2021

These are appeals 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 Blandford ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Blandford owned by and assessed to Peter J. Pappas ("appellant") for fiscal year 2018 ("fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard these appeals and in accordance with G.L. c. 58A, § 1A and 831 CMR 1.20 issued single-member decisions for the appellant with respect to the appeals represented by each of the Docket Nos. with the exception of Docket No. F336907. Chairman Hammond and Commissioners Rose, Good, and Metzger joined him in the decision for the appellant in Docket No. F336907.<sup>1</sup>

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<sup>1</sup> The parties were notified that Docket No. F336907 was issued as a single-member decision. However, consistent with the requirements of G.L. c. 58A, § 1A, the decision relating to this appeal was signed and issued by all the members of the Appellate Tax Board ("Board").

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

*Peter J. Pappas, pro se*, for the appellant.

*Jeffrey T. Blake, Esq.* for the appellee.

### **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner and the Board, as relevant to each appeal, made the following findings of fact.

#### **I. Introduction**

On January 1, 2017, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of property located at 34 Brookman Drive in Blandford ("developed property") and three undeveloped lots located off Albano Drive in Blandford ("undeveloped property") (collectively "subject property").

The developed property consists of a 27,007-square-foot parcel of land improved with a contemporary-style, single-family residence containing three bedrooms, three bathrooms, and a two-car garage. The undeveloped property consists of undeveloped land ranging in size from 17,446 square feet to 20,000 square feet.

## II. Jurisdiction

On the basis of the facts reflected in the following table, the Presiding Commissioner and the Board, as relevant to each appeal, found and ruled that the Board had jurisdiction to hear and decide these appeals.

	Docket No. F336904 401A-0-40.2	Docket No. F336905 401A-0-40.6	Docket No. F336906 401A-0-40.7	Docket No. F336907 34 Brookman Drive
Assessed Value	\$25,700.00	\$25,700.00	\$25,500.00	\$540,200.00
Tax @ \$17.57/\$1,000	\$451.55	\$451.55	\$448.04	\$9,491.31
Tax Timely Paid Without Interest	Yes	Yes	Yes	Yes
Abatement Application Filed Date	1/27/18	1/27/18	1/27/18	1/27/18
Abatement Application Denial Date <sup>2</sup>	4/17/18	4/17/18	4/17/18	--
Denial Notice <sup>3</sup> Date	5/24/18	5/24/18	5/24/18	--
Petition Filed Date	7/26/18	7/26/18	7/26/18	7/26/18

The assessors failed to comply with the notice provisions of G.L. c. 59, § 63 for Docket Nos. F336904, F336905, and F336906, issuing written notice more than a month after their decisions

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<sup>2</sup> The assessors misidentified April 17, 2018 as a deemed denial date. A deemed denial occurs upon the failure of assessors to take action on an abatement application for a period of three months following the filing of the abatement application. See G.L. c. 59, § 64. Here three months had not yet lapsed when the assessors took action.

<sup>3</sup> The assessors issued each of the denial notices on a Property Tax Deferral Denial Notice rather than a Property Tax Abatement/Exemption Denial Notice. The Board construed this as an oversight on the assessors' part.

rather than within the ten days mandated by the statute. Consequently, and as discussed further in the Opinion, below, the Presiding Commissioner found that the appellant was allowed a reasonable time for appeal due to the failure of the assessors to send the denial notices within ten days of their decisions, as required by G.L. c. 59, § 63, and that the filing of the petitions on July 26, 2018, was timely. For Docket No. F336907, the record contained neither a denial date nor a denial notice,<sup>4</sup> and so the Board considered the abatement application for the developed property as deemed denied on April 27, 2018, pursuant to G.L. c. 58A, § 6 and G.L. c. 59, § 65, as discussed further in the Opinion, below. The appellant's petition, filed within three months of this deemed denial date on July 27, 2018, was thus timely filed.

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

The appellant submitted several documents into evidence including: a position statement; a map indicating the location of the undeveloped property, as well as other nearby properties; an aerial photo indicating the location of the undeveloped property; informational documentation concerning the public auction of the undeveloped property; purchase documents for the

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<sup>4</sup> According to a letter from the appellant to the assessors dated August 2, 2018, accompanying the service of petitions for these matters, the appellant noted that he had not received any notice from the assessors on the abatement application for the developed property even though the abatement application had been filed at the same time as the abatement applications for the undeveloped property.

undeveloped property; purchase documents for the developed property; a spreadsheet of six sales that the appellant contended were comparable sales; and a listing of all properties in Blandford located on Brookman Drive, including assessed values, from Blandford's database.

The appellant argued that the assessors overvalued the developed property by \$227,384, and that the correct value should be \$312,816. He indicated that he had purchased the developed property at a public bank auction in 2013 for \$285,000, and that at the time of the sale the property was 90 percent complete. The purchase price plus fees and back taxes amounted to \$312,488, and the appellant testified that he spent an additional \$30,000 to complete the property and landscaping. He noted that the property was assessed at \$395,600 for fiscal year 2017, and that the fiscal year 2018 assessment increased by \$144,600 to \$540,200, even though he had made no improvements to the property. According to the appellant, the developed property is not lakeside and has no dock or water access, and he claimed that other Blandford properties not located on the lake and also lacking a dock or water access are one-third the value of homes located on the lake with docks and water access. In support of his position, he presented six property sales that took place between June 2015 and August 2018. He also contended that the listing of all properties in Blandford located on Brookman Drive

from Blandford's database illustrated that the developed property is valued far higher than other properties not located on the lake.

For the undeveloped property the appellant's opinion of value was \$2,500 for each parcel, the price that he paid for each parcel in 2014 when he purchased the undeveloped property from the Town of Blandford at a public auction. He noted that the undeveloped property is located near Albano Drive, a gravel road, but that the road does not extend to the frontage of any of the three parcels. He stressed that there are no utilities to or near the undeveloped property and that the undeveloped property is undevelopable without major investments in infrastructure. He claimed that he purchased the undeveloped property simply because it abuts a home that he owns and the "terms were acceptable to take control of the raw land that had no value."

#### **IV. The Assessors' Case**

The assessors submitted jurisdictional documents into the record and rested on the assessed values of the subject property for the fiscal year at issue.

#### **V. Findings and Decisions**

Based upon the evidence of record, the Presiding Commissioner and the Board made the following findings.

The sale properties relied upon by the appellant and the listing of properties on Brookman Drive provided the Board with useful data. Moreover, the Presiding Commissioner and the Board found the appellant's testimony to be persuasive. Concerning the developed property, the Board noted the appellant's testimony that no significant changes were made to the developed property between the prior fiscal year and the fiscal year at issue that contributed to a \$144,600 increase in the assessed value. Concerning the undeveloped property, the Presiding Commissioner noted the appellant's testimony as to the limited uses of the property because of the major investments that would need to be made for infrastructure, specifically its lack of utilities and paved road access.

Based upon the foregoing, the Presiding Commissioner and the Board found that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue and determined that the appellant was entitled to the following abatements:

	Docket No. F336904 401A-0-40.2	Docket No. F336905 401A-0-40.6	Docket No. F336906 401A-0-40.7	Docket No. F336907 34 Brookman Drive
Assessed Value	\$25,700.00	\$25,700.00	\$25,500.00	\$540,200.00
Fair Cash Value	\$5,000.00	\$5,000.00	\$5,000.00	\$400,000.00
Overvaluation	\$20,700.00	\$20,700.00	\$20,500.00	\$140,200.00
<b>Abatement Amount</b>	<b>\$363.70</b>	<b>\$363.70</b>	<b>\$360.19</b>	<b>\$2,463.31</b>

## OPINION

### I. Jurisdiction

"A person aggrieved as aforesaid with respect to a tax on property in any municipality may, subject to the same conditions provided for an appeal under section sixty-four, appeal to the appellate tax board by filing a petition with such board within three months after the date of the assessors' decision on an application for abatement as provided in section sixty-three, or within three months after the time when the application for abatement is deemed to be denied as provided in section sixty-four." G.L. c. 59, § 65.

The provisions of G.L. c. 59, § 63 state that the "[a]ssessors shall, within ten days after their decision on an application for abatement, send written notice thereof to the applicant." For Docket Nos. F336904, F336905, and F336906, the assessors took action on the appellant's abatement applications but failed to comply with the notice provisions of G.L. c. 59, § 63, issuing written notice more than a month after their decisions rather than within the ten days mandated by the statute. In *Boston Communications Group, Inc. v. Assessors of Woburn*, "the Board found that, although the assessors voted to deny the appellant's abatement application on April 18, 2009, they did not sign or mail the notice of abatement denial until May 1, 2009, which was more than ten days later." Mass. ATB



Findings of Fact and Reports 2011-780, 784. "Because the assessors failed to give notice of their denial within ten days, as required by § 63, the Board found that the date of the notice of abatement denial was 'ineffective for the purpose of determining when to commence the running of the three-month appeal period.'" *Id.* (quoting **Stagg Chevrolet, Inc. v. Board of Water Commissioners**, 68 Mass. App. Ct. 120, 126 (2007)). Thus the Board found that the taxpayer "had a 'reasonable time [to file an] appeal based on the most relevant statutory standards.'" *Id.* (quoting **Stagg Chevrolet, Inc.**, 68 Mass. App. Ct. at 121). The Board looked to G.L. c. 59, § 65, allowing "taxpayers three months to file an appeal following a notice of abatement denial" and to G.L. c. 59, § 65C, granting "taxpayers up to an additional two months to file an appeal in the event that the assessors fail to send notice of a deemed denial within ten days from the deemed denial." **Boston Communications Group, Inc.**, Mass. ATB Findings of Fact and Reports at 2011-784-85. Applying those relevant statutory standards to the matters at hand, the Board found that the filing of the petitions for Docket Nos. F336904, F336905, and F336906 on July 26, 2018, within three months of when the abatement applications would have been deemed denied (April 27, 2018), was reasonable and timely.

For Docket No. F336907, there was no evidence in the record that the assessors either took action on the abatement application or sent out notice of that inaction. Pursuant to G.L. c. 58A, § 6, "[w]henever a board of assessors . . . fails to act upon said application . . . prior to the expiration of three months from the date of filing of such application, it shall then be deemed to be denied, and the taxpayer shall have the right, at any time within three months thereafter, to take any appeal from such denial to which he may be entitled by law, in the same manner as though the board of assessors had in fact refused to grant the abatement applied for." Here, the abatement application was filed on January 27, 2018. The deemed denial date was April 27, 2018. The appellant filed its petition within three months of that date, on July 26, 2018, and consequently the Board found that Docket No. F336907 was timely filed. See G.L. c. 59, § 65; ***Boston Communications Group, Inc.***, Mass. ATB Findings of Fact and Reports at 2011-784-85.

## **II. The Assessments**

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). Generally, the burden of proof is upon the taxpayer to

prove that property has a lower value than that assessed. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (citing **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)).

That a property was purchased at auction has not historically been looked upon by the Board as an indication of fair market value for assessment purposes. See **Louis Cardaropoli v. Assessors of Longmeadow**, Mass. ATB Findings of Fact and Reports 2001-158, 160 ("The appellant purchased the subject property at auction from the Federal Deposit Insurance Corporation . . . By the sale's very nature, the Board did not consider it to be arm's-length or representative of the market. The appellant did not attempt to show otherwise."). In the present appeals, the Presiding Commissioner and the Board did not adopt the auction values for the subject property. Rather, they found that the properties offered by the appellant, coupled with substantive testimony, provided meaningful comparison and a basis for an abatement.

The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v. Assessors of Malden**, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." **Assessors of Quincy v. Boston Consol. Gas Co.**, 309 Mass. 60, 72

(1941). "The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the [B]oard." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

In sum, the Presiding Commissioner and the Board found the testimony and data provided by the appellant to be persuasive evidence of the subject property's fair cash value. Having considered the record in its entirety, the Board found and ruled that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue and that the appellant was entitled to abatements as follows:

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THE APPELLATE TAX BOARD

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

A true copy,

Attest: /s/ William J. Doherty  
Clerk of the Board