

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**STEVEN A. REMSBERG  
DIANE K. REMSBERG**

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

Docket No. F338205

Promulgated:  
February 8, 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 Arlington ("appellee" or "assessors") to abate a tax on real estate located in the Town of Arlington, owned by Steven A. Remsberg ("Mr. Remsberg") and Diane K. Remsberg (together, the "appellants") and assessed to them under G.L. c. 59, §§ 11 and 38 for the 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 requests for findings of fact and rulings of law made by the appellants under 831 CMR 1.29, treated by the Appellate Tax Board ("Board") as a request for findings of fact and report under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Steven A. Remsberg, Esq., pro se.*

*Paul Tierney, Director of Assessments, 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 Board made the following findings of fact.

### **1. Jurisdiction and Introduction**

On January 1, 2018, the relevant assessment date for the fiscal year at issue, the appellants were the assessed owners of a 7,814-square-foot parcel of real estate located at 24 Linden Street in Arlington ("subject parcel"), improved with a single-family residence ("subject home") and a separately assessed "yard item" (together, the "subject property"). For the fiscal year at issue, the assessors valued the subject property at \$695,900 and assessed a tax thereon, at a rate of \$11.26 per \$1,000, in the amount of \$7,835.83, plus a Community Preservation Act surcharge of \$100.65. The appellants paid the tax due without incurring interest and, in accordance with G.L. c. 59, § 59, timely filed an application for abatement with the assessors. On April 1, 2019, the assessors granted a partial abatement, reducing the subject property's assessed value to \$652,400 ("adjusted assessed value"). Not satisfied with that reduction, the appellants seasonably filed an appeal under the formal procedure with the Board on June 12, 2019. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

## **2. The Subject Property**

The subject home, with 1,779 square feet of finished living area, is a Tudor-style residence constructed around 1930, consisting of eight rooms, including two full bathrooms, a half bathroom, and four bedrooms, as well as an underneath garage. For the fiscal year at issue, the subject home and the yard item were assessed at \$260,700. The subject parcel was initially valued at \$435,200 and was then reduced to \$391,700, a ten percent reduction due to the subject parcel's topography. The subject property's property record card also indicates a five percent reduction in the land value portion of the assessment for an easement, which the assessors agreed was due to a shared driveway.

The appellants presented into evidence: (i) the fiscal year 2019 property record card for the subject property; (ii) photographs of the subject parcel and two copies of a plan dated October 20, 2001, annotated or marked to indicate areas affected by ledge or topographical conditions; (iii) a list of twenty six land influence types in Arlington, including "easement," "ledge," and "topo," and a May 1, 2019 Land Influence Report showing adjustments by property for "ledge" or "topo" ("Land Influence Report"), both of which had been provided by the appellee to the appellants; (iv) a chart with information about four purportedly comparable properties on the same side of the same

street as the subject property; (v) fiscal year 2020 property record cards and photographs for these four properties; (vi) a fiscal year 2019 property record card and photographs for a property several blocks away on Appleton Street; (vii) a notice dated November 15, 1991 indicating an abatement granted with respect to the subject property for fiscal year 1991; (viii) a document indicating the name of the prior owner, an ownership transfer to the appellants in or about 1981, and a ten percent reduction in land value for 1969 and 1970, apparently due to topographical issues; and (ix) the responses of the appellee to the appellants' set of twenty interrogatories.

### **3. The Appellants' Case**

The appellants maintained that the subject property had a fair cash value of \$608,900 for the fiscal year at issue. The appellants disputed only the adjusted assessed value of the subject parcel, not the assessed value of the subject home or the yard item.

Mr. Remsberg described the rear portion of the subject parcel in detail. He stated that this portion, reached by a set of ascending stone stairs, rose at its highest level about sixteen feet above the grade of Linden Street and, at the top of the stairs, approximately twelve feet above the patio in the front portion of the subject parcel. One side of the rear portion was comprised of what Mr. Remsberg described as a "ledge cliff" that

was not readily accessible. According to the plans introduced into evidence by the appellants, the ledge cliff occupies approximately one-third of the rear portion of the subject parcel. The appellants asserted that the ledge cliff area was "wholly unusable[,] a potential danger for persons attempting to traverse it . . . and an attractive nuisance," particularly for children. Mr. Remsberg described the balance of the rear portion of the subject parcel as a level, or flat, area with ledge as well, and of limited usefulness. The appellants initially allowed the rear portion of the lot to grow wild, but later constructed a couple of plant beds adjacent to the stairs, and added a gazebo.

The front portion of the subject parcel, on which the subject home stands, with a driveway shared by the neighbor at 20 Linden Street, was not described as having adverse land conditions. According to the plans introduced by the appellants, the front portion occupies approximately one-half of the subject parcel.

The appellants sought a twenty percent reduction in the initially assessed value of the subject parcel. Applying this reduction to the assessed value of the subject parcel before the 10 percent abatement granted by the appellee, the appellants arrived at a land value of \$348,200.

As noted above, in support of their position, the appellants referenced four purportedly comparable lots on the same side of Linden Street as the subject property. The appellants stated that

even after the appellee's partial abatement, the per-square-foot assessed value of the subject parcel remained higher than that of the four Linden Street lots, despite adverse elements of the subject parcel's topography not present on the four lots. Having compared the parcels of these properties to the subject parcel, the appellants claimed that a further reduction in the subject property's adjusted assessed value was warranted. The appellants drew a similar inference from their review of the property located several blocks from the subject property.

#### **4. The Appellee's Case**

For their part, in addition to jurisdictional documents and a fiscal year 2019 property record card for the subject property, the assessors submitted a comparable-sales analysis that included sales of three properties that occurred between April and August of 2017, elements of which are reflected in the following table.

<b>Appellee's Comparable Sale Properties</b>	<b>25 Coolidge Road</b>	<b>119 Oakland Avenue</b>	<b>295 Appleton Street</b>
Land Size (sq. ft.)	6,633	8,368	4,500
Neighborhood	9	8	7
Style	Old Style	Colonial	Tudor
Finished Area (sq. ft.)	1,658	1,728	1,370
Year Built	1927	1928	1937
No. of Baths	1-1/2	1-3/4	2
FY 2019 Assessed Value	\$695,600	\$719,100	\$647,400
Sale Price	\$725,000	\$755,000	\$703,000
Adjusted Price/ Indicated Value	\$745,000	\$730,000	\$730,500

The Director of Assessments testified that although a ledge adjustment had not been made to the land value of the property on Coolidge Road, the property had "quite a bit of ledge in the[] backyard" that the assessors felt "did not impact the sale of that property."

## **5. The Board's Decision**

In presenting their case, the appellants failed to consider the assessed value of the subject property as a whole. Rather, they sought to establish their entitlement to an abatement by focusing only on claimed adverse land conditions impacting portions of the subject parcel and comparing the assessed value of

the subject parcel with the assessed value of nearby parcels, taking into account perceived topographical differences.

In contrast, the assessors introduced uncontroverted evidence of comparable sales, which were close in time to the relevant assessment date, and were adjusted for differences with the subject property. The Board found this evidence credible and supportive of the contested assessment.

On the basis of the evidence of record, and for the reasons described in the Opinion below, the Board found and ruled that the appellants failed to meet their burden of demonstrating that the fair cash value of the subject property was less than its adjusted assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in this appeal.

#### **OPINION**

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, § 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).

A taxpayer has the burden of proving that the taxpayer's property has a lower value than that assessed. The burden of proof



is upon the taxpayer to make out a right as a matter of law to an abatement of the tax. *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974) (citing *Judson Freight Forwarding Co. v. Commonwealth*, 242 Mass. 47, 55 (1922)). The Board is entitled to presume that the valuation made by the assessors is valid unless the taxpayer proves the contrary. *General Electric Co. v. Assessors of Lynn*, 393 Mass. 591, 598 (1984) (citing *Schlaiker*, 365 Mass. at 245).

In the instant appeal, referencing nearby parcels, the appellants maintained that the topography adjustment made by the assessors in the value of the subject parcel inadequately reflected adverse ledge and topographical conditions in the rear portion of their lot. In the appellants' view, the assessors' failure to make a sufficient adjustment for the subject parcel's topography indicated that the subject property was overvalued for the fiscal year at issue.

Even assuming that the appellants' evidence lent support to the assertion that the value of the subject parcel was not properly adjusted, the Board was guided by the longstanding principle that a taxpayer does not establish a right to abatement merely by showing that the land component of an assessment 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, 316-17 (1941); see also *Hinds v. Assessors of Manchester-by-the-Sea*, Mass. ATB Findings of Fact and Reports 2006-771, 778. Although the component parts of an assessment are each open to inquiry and revision by the appellate tribunal when determining whether a property was overvalued, 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." *Massachusetts General Hospital v. Belmont*, 238 Mass. 396, 403 (1921); see also *Buckley v. Assessors of Duxbury*, Mass. ATB Findings of Fact and Reports 1990-110, 119. The Board found that the appellants did not provide sufficient evidence to answer this question in the affirmative.

In fact, the assessors, through their submission of a comparable-sales analysis, provided the only evidence of the fair cash value of the subject property as a whole. Actual sales generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." *Foxboro Associates v. Assessors of Foxborough*, 385 Mass. 679, 682 (1982); *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 469 (1981); *First National Stores, Inc. v. Assessors of Somerville*, 358 Mass. 554, 560 (1971). "Adjustments must be made to . . . sales data to account for differences between the

subject property and the properties offered for comparison.”  
***Doherty v. Assessors of Lee***, Mass. ATB Findings of Fact and Reports  
2013-174, 181 (citing ***Graham v. Assessors of West Tisbury***, Mass.  
ATB Findings of Fact and Reports 2007-321, 396).

The assessors’ comparable-sales analysis incorporated credible evidence of actual sales, which were close in time to the relevant assessment date and were adjusted to account for differences with the subject property. Thus, the Board found that the analysis supported the adjusted assessed value of the subject property for the fiscal year at issue.

[This space intentionally left blank.]

On the basis of the foregoing, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property's adjusted assessed value exceeded its fair cash value for the fiscal year at issue, and that the evidence of record supported the subject property's adjusted assessed value.

Accordingly, the Board issued a decision for the appellee in this appeal.

**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