COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ROUTE 57 SOLAR, LLC	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF AGAWAM**
Docket Nos. F338342, F338343 F340231, F340232		
AGAWAM SOLAR, LLC	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF AGAWAM**
Docket Nos. F338344, F338345 F340233, F340234		Promulgated: June 3, 2022

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 Agawam ("appellee" or "assessors") to abate taxes on certain parcels of real estate and solar property erected thereon located in Agawam. The appeals were brought by Route 57 Solar, LLC ("Route 57 Solar")[1] and Agawam Solar, LLC ("Agawam Solar")[2] (together, the "appellants") under G.L. c. 59, §§ 11 and 38, for fiscal years 2019 and 2020 ("fiscal years at issue").

Former Chairman Hammond heard these appeals. He was joined by Commissioners Good, Elliott, Metzer, and DeFrancisco in the decisions for the appellee.

[1] Formerly known as Rivermoor-Citizens Route 57, LLC.
[2] Formerly known as Rivermoor-Citizens Agawam, LLC.

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

Thomas N. Wilson, Esq. for the appellants.

Stephen J. Buoniconti, Esq. for the appellee.

FINDINGS OF FACT AND REPORTS

Based on documentary evidence and testimony submitted by the parties during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2018, and January 1, 2019, the valuation and assessment dates for the fiscal years at issue, the appellants were each the assessed owners of solar property located in the Town of Agawam (collectively, the "subject solar properties"). The subject solar property owned by Route 57 Solar was located on a parcel at 912 Shoemaker Lane, and the subject solar property owned by Agawam Solar was located on a parcel at 365 Main Street (together, the "subject parcels").

The appellants did not own the subject parcels. The owner of the subject parcel at 912 Shoemaker Lane was Westmass Development Corporation, and the owner of the subject parcel at 325 Main Street was Mushy's Golf Center, LLC. The appellants each signed leases with the owners of the subject parcels, which provided that the appellants would pay property taxes assessed against the subject

solar properties, and that they would "further be responsible for payment of any increase in the real estate taxes over and above the real estate taxes levied on [the subject parcels] for Fiscal Year 2011."

For the fiscal years at issue, the appellee assessed the subject solar properties to the appellants, respectively, and the subject parcels to Westmass Development Corporation and to Mushy's Golf Center, LLC, respectively. Information relevant to the Board's jurisdiction is summarized in the following charts:

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Fiscal Year 2019

Property address/ Real or personal/ Assessed value	Tax amount/ Tax rate (per $1,000)[3]	Taxes timely paid?	Abatement application filed	Denial date	Petition filed with Board
912 Shoemaker Ln. Real estate $645,400	$20,601.17 $31.92	Y	01/25/2019	04/23/2019	06/18/2019
912 Shoemaker Ln. Personal prop. $176,500	$5,633.88 $31.92	Y	01/25/2019	03/18/2019	06/18/2019
365 Main St. Real estate $941,054	$30,038.44 $31.92	Y	01/25/2019	04/23/2019	06/18/2019
365 Main St. Personal prop. $282,500	$9,017.40 $31.92	Y	01/25/2019	03/18/2019	06/18/2019

Fiscal Year 2020

Property address/ Real or personal/ Assessed value	Tax amount/ Tax rate (per $1,000)[4]	Taxes timely paid?	Abatement application filed	Denial date	Petition filed with Board
912 Shoemaker Ln. Real estate $645,400	$20,401.09 $31.61	Y	01/29/2020	03/09/2020	05/13/2020[5]
912 Shoemaker Ln. Personal prop. $176,500	$5,579.17 $31.61	Y	01/29/2020	02/13/2020	05/13/2020
365 Main St. Real estate $938,954	$29,680.34	Y	01/29/2020	03/09/2020	05/13/2020
365 Main St. Personal prop. $282,500	$8,929.83 $31.61	Y	01/29/2020	02/13/2020	05/13/2020

Based on this information, the Board found and ruled that it had jurisdiction over these appeals.

[3] These amounts do not include Community Preservation Act surcharges.

[4] *See* note 3.

[5] While the Board date-stamped each of the fiscal year 2020 petitions on June 16, 2020, their envelope bore a United States Postal Service postmark of May 13, 2020. The Board thus found and ruled that the petitions were timely. *See* G.L. c. 59, § 64 (for purposes of determining jurisdiction, if a petition is received after the due date, the date of mailing is deemed to be the date of delivery).

Each subject parcel and the solar property erected thereon was the subject of a Payment In Lieu of Taxes Agreement that each appellant had negotiated with the Town of Agawam (together, the "PILOT Agreements"). The PILOT Agreements were executed on December 14, 2011, and according to their terms, were to be in effect for fiscal years 2012 through 2037. The PILOT Agreements set fixed combined valuations for the subject solar properties and the subject parcels. The combined real and personal property at 912 Shoemaker Lane was to be valued at $176,500, and the combined real and personal property at 365 Main Street was to be valued at $282,500. The PILOT Agreements provided that the applicable commercial tax rate for each fiscal year would be applied to these values. The owners of the subject parcels were not parties to the PILOT Agreements.

For each of the fiscal years at issue, the appellee issued real estate tax bills for the subject parcels to the owners of record, and issued personal property tax bills for the subject solar properties to the appellants. The tax bills were based on valuations that exceeded the valuations specified in the PILOT Agreements.

The appellants challenged the assessments for violating the terms of the PILOT Agreements and G.L. c. 59, § 38H(b) ("§ 38H(b)"), the statute recognizing PILOT agreements for

electricity-generation facilities, as in effect for the fiscal years at issue.

The appellee defended the higher valuations, claiming that, because the appellants were not the owners of the underlying subject parcels, the PILOT Agreements violated § 38H(b) and were not enforceable.

As explained in the following Opinion, the Board found and ruled that it lacked authority to rule on the enforceability of the PILOT Agreements.

The appellants, having focused entirely on enforcement of the PILOT Agreements, did not offer evidence to challenge the valuations of the subject solar properties or the subject parcels, and thus failed to meet their burden of proving that the subject solar properties' and subject parcels' assessed values exceeded their fair cash values for the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in these appeals.

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OPINION

All property, real and personal, situated within the Commonwealth is subject to local tax, unless expressly exempt. G.L. c. 59, § 2. Taxes are assessed according to their valuations as determined by the assessors. However, cities and towns are permitted to enter into agreements with taxpayers in certain circumstances to set valuations for property. One such example is a PILOT agreement, as permitted under § 38H(b), for property used in the generation of electricity. For the tax years at issue, § 38H(b) provided, in pertinent part, as follows:

> (b) A generation company or wholesale generation company which does not qualify for a manufacturing classification exemption pursuant to paragraph (3) of the clause Sixteenth of said section 5 may, in order to comply with its property tax liability obligation, execute an agreement for the payment in lieu of taxes with the municipality in which such generation facility is sited, and said company shall be exempt from property taxes, in whole or in part, as provided in any such agreements during the terms thereof. Any such agreement shall be the result of good faith negotiations and shall be the equivalent of the property tax obligation based on full and fair cash valuation.

The appellants asserted that the PILOT Agreements were "the result of good faith negotiations" with the Town of Agawam. They further argued that they were obligated to pay real estate and personal property taxes on the subject solar properties as well as on the subject parcels pursuant to their lease agreements and, therefore, the PILOT Agreements were executed "in order to comply

with [their] property tax liability obligation[s],” in keeping with § 38H(b). Thus, in their view, the appellee was bound by the terms of the PILOT Agreements.

The appellee countered that, because the appellants did not own the subject parcels, and the taxes on the subject parcels were assessed to their owners for the fiscal years at issue, the taxes assessed on the subject parcels were not the property tax liability obligations of the appellants. Thus, the appellee concluded that the PILOT Agreements were invalid because they did not address the obligations of the parties that negotiated and executed the agreements.

The Board has ruled on issues surrounding the taxability of properties subject to PILOT agreements, including but not limited to: the correct tax rate to be applied to property bound by a PILOT agreement (***Salem and Beverly Water Supply Board v. Assessors of Danvers***, Mass. ATB Findings of Fact and Reports 2003-603, *aff’d*, 63 Mass. App. Ct. 222 (2005)); and whether a PILOT agreement was evidence of a property being exempt from tax (***AMB Fund III v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2011-969, *aff’d*, 82 Mass. App. Ct. 1123 (2012) (Rule 1:28). However, the Board has not previously been asked to enforce the terms of a PILOT agreement.

The Board is cognizant that its adjudicatory authority is defined by statute. *See, e.g.*, ***Comm’r of Revenue v. Marr***

Scaffolding Co., 414 Mass. 489, 494-5 (1993) (ruling that the Board lacked authority to grant abatements of taxes based on principles of equity). Whether an agreement between parties is binding is a question of contract law. *See, e.g.*, ***Situation Mgt. Systems v. Malouf, Inc.***, 430 Mass. 875 (2000). In an appeal from the Housing Court, the Appeals Court has ruled that, in the absence of statutory authority, that specialized adjudicatory body did not have subject-matter jurisdiction over an action involving breach of contract. *See* ***Isakson v. Vincequere***, 33 Mass. App. Ct. 281, 283-85, (1992) (Rule 1:28), *rev. denied*, 413 Mass. 1109 (1992). The same principle applies here.

"An administrative agency has no inherent or common law authority to do anything. An administrative board may act only to the extent that it has express or implied statutory authority to do so." ***Marr Scaffolding***, 414 Mass. at 493. The Board found no statutory grant of authority to enforce the terms of the PILOT Agreements. Its review of the subject appeals was, therefore, limited to whether the assessed values of the subject parcels and the subject solar properties exceeded their fair cash values for the fiscal years at issue.

"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)). Having focused only on enforcement of the PILOT Agreements, the appellants did not present evidence regarding the valuations of the subject solar properties or the subject parcels. Consequently, the appellants failed to meet their burdens of proving lower fair cash values for the properties than their assessed values.

Lacking the authority to enforce the terms of the PILOT Agreements and any evidence of overvaluation, the Board issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: /S/ Mark J. DeFrancisco
Mark J. DeFrancisco, Commissioner

A true copy,

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