

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**GERALD C. SMITH**

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

Docket No. F337976

Promulgated:  
December 6, 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 Ware ("assessors" or "appellee") to abate a tax on certain real property located in the Town of Ware owned by and assessed to Gerald C. Smith ("appellant") for fiscal year 2019 ("fiscal year at issue").

Chairman Hammond ("Presiding Commissioner") heard this appeal and issued a single-member decision for the appellee pursuant to G.L. c. 58A, § 1A and 831 CMR 1.20.

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

*Gerald C. Smith, pro se*, for the appellant.

*Joan E. Navarro*, assessor, 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 Presiding Commissioner made the following findings of fact.

On January 1, 2018, the relevant date of valuation for the fiscal year at issue, the appellant was the assessed owner of real property located at 28 Shoreline Drive in the Town of Ware ("subject property"). The subject property consists of a 2,797-square-foot home with three bedrooms, two bathrooms, and two three-quarter bathrooms, situated on a 0.316-acre parcel of land.

The assessors valued the subject property at \$410,600 and assessed a tax thereon at the rate of \$20.21 per \$1,000 in the amount of \$8,298.22. The appellant paid the tax due without incurring interest. The appellant filed an abatement application on January 28, 2019, which was denied by the assessors on April 2, 2019. The appellant filed a petition with the Appellate Tax Board ("Board") on May 30, 2019. Based upon these facts, the Presiding Commissioner found that the Board had jurisdiction over this appeal.

The appellant contended that the land value of the subject property was excessive. He alleged that lakefront properties in the Town of Ware were generally overvalued because the Town failed to take into account costs that would be incurred if the

dam had to be replaced. To determine what he considered the fair cash value of the subject property's land, he took the average per-acre land values of thirteen properties on Shoreline Drive, including the subject property, and derived a basic per-acre land value of \$374,254. Applying this average to the subject property's acreage, he claimed that the subject property's land value should be \$118,264 and not \$161,100, as assessed for the fiscal year at issue.

Based upon the record in its entirety, the Presiding Commissioner found and ruled that the appellant failed to meet his burden of proof in establishing that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. The appellant's per-acre average of land values based upon properties located on Shoreline Drive - including the contested land value of the subject property itself - provided neither insight into the comparability of the other properties or into any error on the part of the assessors, nor any correlation with the appellant's contention regarding speculative costs for a dam replacement. Critically, the appellant's sole focus on the land values of the subject property and other Shoreline Drive properties failed to establish why the assessment of the subject property as a whole exceeded its fair cash value for the fiscal year at issue. The relevant question is not whether either a land or building value

is excessive, but rather whether the overall assessment is excessive.

Based upon the above, the Presiding Commissioner issued a decision for the appellee in this appeal.

### OPINION

The 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 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 property at issue has a lower 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)). "[T]he board is entitled to 'presume that the valuation made by the assessors [is] valid unless that taxpayer[] sustain[s] the burden of proving the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

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.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)). Here, the appellant provided no evidence of overvaluation and exposed no flaws in the assessors' method of valuation, instead relying upon speculation and a simple per-acre average of land values of properties located on Shoreline Drive, including the land value of the subject property itself.

Further, the appellant focused on land values rather than the overall assessment. A "'tax on a parcel of land and the building thereon is one tax' and the ultimate conclusion is whether 'that single assessment is excessive.'" **Lang v. Assessors of Marblehead**, Mass. ATB Findings of Fact and Reports 2019-385, 396 (citations omitted). A "'taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but rather that the assessment including both components is excessive." **Id.** The appellant's analysis did not establish why the land value of the subject property allegedly exceeded fair cash value, let alone why the total assessment of the subject property exceeded fair cash value for the fiscal year at issue.

Based upon the above and the record in its entirety, the Presiding Commissioner found and ruled that the appellant failed to establish that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue. Accordingly, the Presiding Commissioner 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