

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ALAN SOLOMON

v.

BOARD OF ASSESSORS OF  
THE TOWN OF MARION

Docket No. F337516

Promulgated:  
July 2, 2020

This is an appeal filed under the formal procedure pursuant to G.L. c. 59, §§ 64 and 65 and G.L. c. 58A, § 7, from the refusal of the Board of Assessors of the Town of Marion ("appellee" or "assessors") to abate a tax on real estate located in the Town of Marion, owned by and assessed to Alan Solomon ("appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

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

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

*Alan Solomon, pro se*, for the appellant.

*Patricia DeCosta*, chairman of the assessors, and *Linda Dessert*, 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 Appellate Tax Board ("Board") 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 a 9,834-square-foot parcel of land, improved with a dwelling, located at 15 Spinnaker Lane in Marion ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,246,800, and assessed a tax thereon, at the rate of \$11.03 per thousand, in the total amount of \$14,749.88, inclusive of a Community Preservation Act surcharge.

On January 29, 2019, the appellant timely filed an Application for Abatement with the assessors. The Application for Abatement was denied by vote of the assessors on March 27, 2019. The appellant timely filed an appeal with the Board on April 24, 2019. Based on the foregoing, the Board found that it had jurisdiction to hear the appeal.<sup>1</sup>

The subject property is a waterfront parcel. It is improved with a 2,786-square-foot dwelling containing a total of seven rooms, including three bedrooms, along with three bathrooms.

---

<sup>1</sup> The record showed that although interest was incurred in connection with the payment of the subject property's tax for the fiscal year at issue, payments were sufficient to satisfy the three-year average provisions of G.L. c. 59, §§ 64 and 65, such that the Board retained jurisdiction over the appeal.

Additional amenities include central-air conditioning, a patio, a shed, and an outdoor shower. The dwelling was originally constructed in 1959, but was expanded and renovated between 1999 and 2012.

It was the appellant's contention in this appeal that the subject property's assessed value exceeded its fair market value. In particular, the appellant disputed the subject property's land value, which had increased from \$560,000 for fiscal year 2018 to \$956,000 for the fiscal year at issue.

In support of his argument for overvaluation, the appellant introduced binders containing assessment data for numerous nearby waterfront properties. The following tables contain relevant fiscal year 2019 assessment information regarding the comparison properties selected by the appellant.

**Appellant's West Street Assessment Comparison Properties**

<b>Address</b>	<b>Lot Size (ac)</b>	<b>Assessed Land Value</b>	<b>Total Assessed Value</b>
12 West St.	0.32	\$970,000	\$1,108,100
16 West St.	0.26	\$942,600	\$1,274,500
18 West St.	0.36	\$986,800	\$1,243,400
28 West St.	0.28	\$952,100	\$1,162,000
32 West St.	0.51	\$1,058,900	\$1,248,100
46 West St.	0.39	\$1,519,200	\$1,002,000
50 West St.	0.27	\$948,800	\$1,199,100
60 West St.	0.48	\$1,041,800	\$1,272,700

**Appellant's Moorings Road Assessment Comparison Properties**

<b>Address</b>	<b>Lot Size (ac)</b>	<b>Assessed Land Value</b>	<b>Total Assessed Value</b>
5 Moorings Rd.	1.95	\$1,675,000	\$1,904,100
17 Moorings Rd.	2.41	\$1,805,700	\$2,629,300
21 Moorings Rd.	2.87	\$1,851,000	\$3,014,800
35 Moorings Rd.	3.50	\$1,913,300	\$2,662,300
63 Moorings Rd.	2.51	\$1,815,600	\$2,547,400

The appellant additionally submitted a binder containing maps, property record cards, and a written statement concerning the relative increases in assessed value among several other nearby properties. The appellant argued that the subject property's land value was disproportionately assessed compared to the land values of numerous other waterfront properties, which had seen smaller increases over the previous fiscal year's valuation or were assessed at lower per-square-foot values.

The assessors for their part submitted the relevant jurisdictional documents, property record cards for the subject property, area maps and photographs, and a sales-comparison packet featuring sales information, including property record cards and deeds, for three sales-comparison properties. Relevant information for these waterfront properties is contained in the following table.

### Assessors' Sales-Comparison Properties

Address	Living Area (sf)	Lot size (ac)	Sale Date	Sale Price
14 Taunton Ave.	2,202	0.31	3/22/2017	\$1,230,000
12 Hartley Ln.	2,564	0.27	6/20/2017	\$1,400,000
1 Converse Rd.	2,719	0.46	9/6/2018	\$1,400,000

It was the assessors' opinion that these sales supported the assessed value of the subject property for the fiscal year at issue and that the subject property was assessed consistently with other nearby properties.

On the basis of the record in its entirety, the Board found that the appellant failed to meet his burden of demonstrating that the assessed value of the subject property exceeded its fair market value for the fiscal year at issue.

The appellant's primary dispute was the increase in the subject property's land value. As discussed further in the Opinion below, the mere fact that the subject property's land value increased significantly is not enough to sustain the burden of proof. Rather, to prove entitlement to an abatement, a taxpayer must show that the assessed value of the subject property as a whole exceeds its fair market value. The Board found that the appellant failed to do that here.

As an initial matter, the Board found that the appellant's comparison properties did not support his claim for abatement. The assessed values of land at the West Street properties whose

lot sizes were similar in size to that of the subject property ranged from \$942,600 to \$970,000. The Board found that these values did not support the conclusion that the subject property's land value of \$956,000 was excessive.

Similarly, the Board was not persuaded by the assessment information for the Moorings Road properties. The lot sizes of those properties were much larger than the subject property's lot, and their assessed land values were also more than that of the subject property. It was the appellant's contention that, on a relative basis, these properties' land values demonstrated that the subject property's land value was excessive. However, and as discussed more fully in the Opinion below, the appellant's analysis failed to take into consideration the well-established valuation principal that as unit size increases, unit value decreases. In sum, the Board was not persuaded by the appellant's valuation evidence.

In contrast, the Board found that the sales-comparison packet offered by the assessors provided ample support for the subject property's assessed value. The Board gave the most weight to 14 Taunton Avenue and 12 Hartley Lane, as those sales both occurred in 2017 and thus were especially timely. Each of them was similar in lot size and living area to the subject property, and their sale prices were \$1,230,000 and \$1,400,000, respectively, for an average of \$1,315,000. The Board found that these sale prices

provided support for the subject property's overall assessed value.

In conclusion, after considering all the evidence, the Board found that the appellant failed to prove that the subject property's assessed value for the fiscal year at issue exceeded its fair market value. 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." G.L. c. 59, § 38. Fair cash value, also referred to as fair market value, is defined as the price on which a willing seller and a willing buyer will agree if both 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 the subject 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)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (citing ***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)).

However, a taxpayer does not conclusively establish a right to abatement merely by showing that the land component of a subject property 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). 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 **Chater v. Assessors of Dighton**, Mass. ATB Findings of Fact and Reports 2009-372, 380; **Buckley v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-110, 119.

Here, as described below, the appellant failed to establish that his land was overvalued. Further, since he focused exclusively

on the subject property's land value, he did not address the issue of whether the subject assessment, as a whole, reflected the fair market value of the subject property for the fiscal year at issue. The Board therefor found his evidence to be lacking in this respect.

The Board was similarly unpersuaded by the appellant's affirmative valuation evidence, which consisted primarily of comparison to the assessed land values of various nearby properties. The Board found that many of the properties with lot sizes similar to that of the subject property were, in fact, assessed for around the same amount as the subject property. This evidence did not support a finding that the subject property's land value was excessive. Further, the evidence offered by the appellant regarding the assessed land values of properties with lot sizes much larger than that of the subject property also did not support a finding that the subject property's land was overvalued.

The record showed that the assessed land values of these much larger properties were also greater than that of the subject property. The appellant argued the relative assessed land values of these much larger properties supported the conclusion that the subject property's land value was excessive. However, this argument failed to acknowledge the well-established valuation principal that as unit size increases, unit value decreases. See

APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 198 (14<sup>th</sup> ed. 2013); **Finigan v. Assessors of Belmont**, Mass. ATB Findings of Fact and Reports 2004-533, 537 ("One cannot take a unit of value for a given parcel and apply that unit value to increase the value of a larger parcel or decrease the value of a smaller one."). **See also Centre Avenue Realty Trust. v. Assessors of Plymouth**, Mass. ATB Findings of Fact and Reports 2009-1310, 1315 ("The Presiding Commissioner recognized that all other things being equal, smaller properties ordinarily have a higher value per square foot than larger ones."). The Board therefore rejected the appellant's arguments and his valuation evidence.

In contrast, the Board found that the valuation evidence offered by the assessors provided reliable evidence of the subject property's overall fair market value. This evidence consisted of timely sales of properties that were similar to and located close to the subject property. 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). The Board found that the sales offered by the assessors provided additional support for the assessment.

In sum, the Board found that the evidence offered by the appellant failed to demonstrate that the assessed value of the subject property exceeded its fair cash value, while the evidence offered by the assessors provided additional support for the assessment, which was presumptively valid to begin with. Accordingly, the Board concluded that the appellant failed to prove his entitlement to an abatement, and 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