COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

**DR. PHILIP R. SULLIVAN v.   BOARD OF ASSESSORS OF**

 **THE TOWN OF SHERBORN**

Docket No. F328885   Promulgated:

   November 15, 2018

 This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7, G.L. c. 59, §§ 64 and 65, and 831 CMR 1.03 and 1.04, from the refusal of the Board of Assessors of the Town of Sherborn (“assessors” or “appellee”) to abate a tax on certain real estate in the Town of Sherborn, owned by and assessed to Dr. Philip R. Sullivan (“appellant”) under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (“fiscal year at issue”).

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

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.

*Dr. Phillip R. Sullivan*, pro se, for the appellant.

*Wendy Elassy,* Director of Assessing for the appellee.

**FINDINGS OF FACT AND REPORT**

Based on the parties’ submissions, the Presiding Commissioner made the following findings of fact.

On January 1, 2015, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the assessed owner of an approximately 5.01-acre parcel of land improved with a 1508-square-foot, Ranch-style dwelling located at 324 Western Avenue in Sherborn (“subject property”).

 For the fiscal year at issue, the assessors initially valued the subject property at $502,528 and the appellant timely paid the tax due without incurring interest. The appellant filed an application for abatement, and the assessors reduced the subject property’s assessed value by approximately 5 percent. Not satisfied with this result, the appellant timely filed an appeal with the Appellate Tax Board (“Board”). Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

 In support of his assertion that the subject property was overvalued for the fiscal year at issue, the appellant argued that a proposed development adjoining the subject property would adversely affect the subject property’s value.[[1]](#footnote-1) In particular, the appellant argued that the development would be inconsistent with the bucolic atmosphere in Sherborn and that its extended septic systems and large water supply would threaten the subject property’s well and septic system. The appellant did not produce any evidence in support of his arguments beyond his own unsubstantiated speculation.

For their part, the assessors submitted the requisite jurisdictional documents, the property record card for the subject property, and property record cards for three purportedly comparable properties. The purportedly comparable properties’ parcels varied dramatically in size and the assessors failed to account for differences with the subject property. Consequently, the Presiding Commissioner afforded no weight to the assessors’ comparable-sales data.

Ultimately, the Presiding Commissioner found that the appellant failed to sustain his burden of demonstrating that the subject property’s fair cash value exceeded its assessed value for the fiscal year at issue. Accordingly, the Presiding Commissioner decided this appeal for the appellee.

**OPINION**

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). However, the appellant has the burden of proving that the subject property’s fair cash value was lower than its assessed value. “‘The burden of proof is upon the petitioner to make out [his] 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)).

In appeals before the Board, taxpayers “‘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. v. Assessors of Lynn,*** 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellant based his case on a claimed diminution in value resulting from a proposed development to be built next to the subject property. As a threshold matter, the property to be developed was not sold and the development was not approved as of the relevant assessment date, substantially undermining the appellant’s argument. Further, the appellant simply speculated about the effect of the planned development on the subject property, without substantiating his claims. Consequently, the Presiding Commissioner found that the appellant failed to expose flaws in the assessors’ valuation or provide affirmative evidence of the subject property’s fair cash value. In turn, the Presiding Commissioner found and ruled that the appellant failed to sustain his burden of proving that the subject property’s fair cash value was lower than its assessed value for the fiscal year at issue. The Presiding Commissioner, therefore, decided this appeal for the appellee.

 **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

 **Clerk of the Board**

1. The adjoining property was sold to developers on March 1, 2015 and the development plan was approved by Sherborn during June of 2015. [↑](#footnote-ref-1)