

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DANIEL J. TORTORA

v.

**BOARD OF ASSESSORS OF
THE TOWN OF WAREHAM**

Docket No. F339728

Promulgated:
May 5, 2023

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 Wareham ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Daniel J. Tortora ("appellant") for fiscal year 2020 ("fiscal year at issue").

Commissioner Elliott heard the appeal. He was joined by Chairman DeFrancisco and Commissioners Good and Metzger in the decision for the appellant.

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

William T. Condon, Esq., for the appellant.

Jacqui Nichols, Director of Assessment, for the appellee.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and written statements submitted, pursuant to 831 CMR 1.31, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2019, the appellant was the assessed owner of a 0.71-acre waterfront parcel of land improved with a single-family dwelling located at 43 Pine Tree Drive in Wareham ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,136,900 and assessed a tax thereon, at the rate of \$10.98 per \$1,000, in the total amount of \$15,928.45.¹ The appellant timely paid the tax assessed without incurring interest. On January 16, 2020, the appellant timely filed an abatement application with the assessors. On February 13, 2020, the assessors granted a partial abatement, reducing the subject property's assessed value to \$1,085,700 - \$768,400 for the land and \$317,300 for the structures. The appellant seasonably filed his appeal with the Board on April 28, 2020. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a 1.5-story, Cape-Cod-style, single-family dwelling built in 1967 ("subject dwelling").

¹This includes a 3 percent Community Preservation Act ("CPA") surcharge and an Onset Fire District tax.

The subject dwelling has a finished living area of 2,024 square feet containing ten rooms, including four bedrooms, as well as three full bathrooms and one half bathroom. Additional amenities include an attached one-car garage, two fireplaces, a partially finished walk-out basement, an in-ground pool, a patio, a large rear deck that extends the majority of the first floor, and a shed. The subject dwelling is stated to be in above average condition.

In support of his claim that the subject property was overvalued for the fiscal year at issue, the appellant offered into evidence numerous exhibits, including the Wareham assessors' maps for the subject property's neighborhood, the subject property's property record card for the fiscal year at issue, and photographs of the subject property's shoreline. The photographs depicted the subject property's "sandy beach," as noted on the property record card, as a small area of sand between the dunes and the rocky shoreline.

The appellant also provided a listing of the land valuations for 29 properties located on Pine Tree Drive for fiscal year 2019 and the fiscal year at issue. Relying on the cited land valuations, the appellant provided two different computations to demonstrate that the subject property was overvalued for the fiscal year at issue. First, the appellant calculated a per-acre assessed value for all 29 properties, which included the subject property. According to his calculations, the land valuations for the fiscal

year at issue ranged from \$128,644 per acre to \$1,294,242 per acre. The subject property's land value for the fiscal year at issue was \$1,082,253 per acre, the fifth highest land valuation on a per-acre basis. The appellant also compared the 29 properties' land valuations for the fiscal year at issue to the prior fiscal year. These calculations indicated that, in general, the even-numbered properties, which are facing Butler's Cove, experienced a decrease in land values ranging from 1.4 percent to 9.5 percent. In contrast, the odd-numbered properties, including the subject property, which are facing Buzzards Bay, had increases in land values ranging from 10.3 percent to 27.24 percent. The subject property, with a land-value increase of 25.4 percent when compared to the previous fiscal year, had the third highest change in assessment.

For their part, the assessors submitted relevant jurisdictional documents, the property record card for the subject property, and the sales information for three properties located on the same street as the subject property. Relevant information for these sales is contained in the following table.

Address	Land Area (acres)	Living Area (sq. ft.)	Water View	Sale Date	Sale Price
5 Pine Tree	2.63	5,955	Bay	7/26/20	\$1,950,000
13 Pine Tree	2.87	4,698	Bay	6/14/18	\$2,375,000
16 Pine Tree	0.44	2,690	Cove	2/28/19	\$ 850,000

The assessors maintained that properties facing Buzzards Bay, such as the subject property, typically sell for higher prices compared to the properties facing Butler's Cove due, in large part, to the mud flats in the cove that are exposed at high tide. For that reason, the assessors argued that the subject property's assessed value, as abated, was appropriate for the fiscal year at issue.

Based on the evidence presented, the Board found that the subject property's fair cash value was less than its assessed value, as abated, for the fiscal year at issue. The Board found that the land valuations for the properties located on Pine Tree Drive were probative of the subject property's land valuation for the fiscal year at issue. The Board further found that the sale at 16 Pine Tree Drive provided probative evidence of the subject property's fair cash value for the fiscal year at issue. This evidence, and the fact that the bulk of the subject property's assessment for the fiscal year at issue was in its land value, indicated that the subject property's assessed value, as a whole, was excessive for the fiscal year at issue. The Board ultimately found that the subject property's fair cash value for the fiscal year at issue was \$1,000,000.

Accordingly, the Board decided this appeal for the appellant and granted an abatement in the amount of \$1,203.18, inclusive of the Onset Fire District tax and the CPA surcharge.

OPINION

Assessors are required to assess real estate at its full and 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 of them 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 the 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)).

In the present appeal, the appellant focused primarily on perceived errors in the assessors' valuation of the land component associated with the subject property. A taxpayer, however, does not establish a right to abatement merely by showing that his land 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 **Boudreau v. Assessors of Eastham**, Mass. ATB Findings of Fact and Reports 2019-138, 146; **Black v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2006-575, 582-83.

In evaluating the evidence before it, the Board selected among the various elements of value and formed its own independent judgment of fair cash value. **General Electric Co.** 393 Mass. at 605; **North American Philips Lighting Corp. v. Assessors of Lynn**, 392 Mass. 296, 300 (1984). The Board need not specify the exact manner in which it arrived at its valuation. **Jordan Marsh v.**

Assessors of Malden, 359 Mass. 106, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment."
Assessors of Quincy v. Boston Consolidated Gas Co., 309 Mass. 60, 72 (1941).

Based on the evidence presented, the Board found and ruled that the subject property's fair cash value was less than its assessed value, as abated, for the fiscal year at issue. The Board found that the land valuations for the properties located on Pine Tree Drive supported the appellant's assertion that the subject property's assessed value was excessive, taking into account that the bulk of the subject property's assessment for the fiscal year at issue was its land value. This conclusion, coupled with the finding that the sale at 16 Pine Tree Drive provided probative evidence of the subject property's fair cash value, led the Board to find and rule that the subject property's fair cash value was less than its assessed value, as abated, for the fiscal year at issue. Based on the evidence of record, the Board ultimately found that the subject property's fair cash value for the fiscal year at issue was \$1,000,000.

Accordingly, the Board decided this appeal for the appellant and granted an abatement in the amount of \$1,203.18, inclusive of the Onset Fire District tax and the CPA surcharge.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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