

**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

**BRUCE R. AND BEVERLY WARILA,  
T/E**

**v. BOARD OF ASSESSORS OF THE  
CITY OF LEOMINSTER**

Docket Nos. F337441-F337445,  
F341965-F341969

Promulgated:  
March 15, 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 City of Leominster ("assessors" or "appellee") to abate taxes on certain real estate located in the City of Leominster owned by and assessed to Bruce R. and Beverly Warila, T/E ("appellants") for fiscal years 2019 and 2021 ("fiscal years at issue").

Commissioner Elliott ("Presiding Commissioner") heard these appeals and issued - pursuant to G.L. c. 58A, § 1A and 831 CMR 1.20 - single-member decisions for the appellants in Docket Nos. F337441, F337442, F337443, F337444, F337445, F341965, F341967, F341968, and F341969, and a single-member decision for the appellee in Docket No. F341966.

These findings of fact and report are promulgated pursuant to requests by the appellants (for all Docket Nos.) and appellee (for

all Docket Nos. except F341966) under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Edward C. Bassett, Jr., Esq.* for the appellants.

*William Connor*, assessor, and *Christopher Reidy*, assessor, for the appellee.

## **FINDINGS OF FACT AND REPORT**

On the basis of the testimony and exhibits offered into evidence at the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

### **I. Introduction and Jurisdiction**

On January 1, 2018, and January 1, 2020, the relevant dates of valuation for fiscal year 2019 and fiscal year 2021, respectively, the appellants were the assessed owners of five parcels of land - Lot 10 Technology Drive, Lot 11 Technology Drive, Lot 12 Technology Drive, Lot 13 Technology Drive, and Lot 14 Technology Drive (collectively "subject parcels") - totaling 11.0 acres. Lot 11 Technology Drive was leased and improved with a cell phone tower, while the four other subject parcels were undeveloped and hindered by various factors, including a power company easement, a no build zone, wetlands, and lack of a roadway.

The following tables itemize the relevant assessment and jurisdictional information for the fiscal years at issue:

<b>FY 2019</b>					
<b>Docket No.</b>	<b>F337441</b>	<b>F337442</b>	<b>F337443</b>	<b>F337444</b>	<b>F337445</b>
Address	Lot 10 Technology Drive	Lot 11 Technology Drive	Lot 12 Technology Drive	Lot 13 Technology Drive	Lot 14 Technology Drive
Assessed Value	\$97,600 (adjusted)	\$421,000	\$66,600	\$67,600	\$65,300
Tax Rate	\$18.54	\$18.54	\$18.54	\$18.54	\$18.54
Taxes Assessed	\$1,809.50 (adjusted)	\$7,805.34	\$1,234.76	\$1,253.30	\$1,210.66
Taxes paid with no interest and/or less than \$5,000 <sup>1</sup>	Yes	Yes	Yes	Yes	Yes
Abatement Application	1/10/19	1/10/19	1/10/19	1/10/19	1/10/19
Abatement Application Denied/ Partial Abatement	1/17/19 Partial Abatement (\$168,700 abated down to \$97,600)	1/22/19 Denied	1/22/19 Denied	1/22/19 Denied	1/22/19 Denied
Petition	4/12/19	4/12/19	4/12/19	4/12/19	4/12/19
<b>FY 2021</b>					
<b>Docket No.</b>	<b>F341965</b>	<b>F341966</b>	<b>F341967</b>	<b>F341968</b>	<b>F341969</b>
Address	Lot 10 Technology Drive	Lot 11 Technology Drive	Lot 12 Technology Drive	Lot 13 Technology Drive	Lot 14 Technology Drive
Assessed Value	\$85,500	\$381,900	\$85,600	\$81,200	\$36,000
Tax Rate	\$18.13	\$18.13	\$18.13	\$18.13	\$18.13
Taxes Assessed	\$1,550.12	\$6,923.85	\$1,551.93	\$1,472.16	\$652.68
Taxes paid with no interest and/or less than \$5,000	Yes	Yes	Yes	Yes	Yes
Abatement Application	1/25/21	1/25/21	1/25/21	1/25/21	1/25/21
Abatement Application Denied	2/10/21 Denied	2/10/21 Denied	2/10/21 Denied	2/10/21 Denied	2/10/21 Denied
Petition	3/12/21	3/12/21	3/12/21	3/12/21	3/12/21

<sup>1</sup> Pursuant to G.L. c. 59, § 64, "if the tax due for the full fiscal year on a parcel of real estate is more than \$5,000, said tax shall not be abated unless the full amount of said tax due, including all preliminary and actual installments, has been paid without the incurring of any interest charges on any part of said tax."

Based upon this information, the Presiding Commissioner found that the Appellate Tax Board ("Board") had jurisdiction to hear and decide these appeals.

## **II. The appellants' case**

The appellants offered the testimony of Daniel Warila and James M. Curley, Jr. ("appellants' appraiser"), an appraiser, as well as a chart of the assessments for the subject parcels for fiscal years 2018 through 2021 and appraisal reports prepared by the appellants' appraiser for each of the fiscal years at issue.

According to the testimony of the appellants' appraiser and his appraisal reports, the subject parcels were included as a portion of the Southgate Business Park Subdivision, a quasi-public and private project. He explained that while the first phase of the project - a roadway known as Research Drive - had been developed, access to Technology Drive (the location of the subject parcels) from Research Drive had not been developed as of the relevant assessment dates for the fiscal years at issue. He noted that the project developers had initially agreed to acquire the subject parcel, but later backed out.

The appellants' appraiser rejected the cost approach and the comparable sales approach. Settling on an income approach, the appellants' appraiser developed his proposed fair cash value of \$377,000 for fiscal year 2019 and \$400,000 for fiscal year 2021.

These values were based upon the lease in place for Lot 11 Technology Drive, with 3 percent operating expenses and a capitalization rate of 10 percent plus the effective tax rate. The appellants' appraiser attributed no specific value to the remaining four parcels.

The appellants also included in evidence a chart of the assessments for the subject parcels for fiscal years 2018 through 2021 to demonstrate the assessment increases from fiscal year 2018 to the fiscal years at issue:

	FY2021	FY2020	FY2019	FY2018
Lot 10	\$85,500	\$85,500	\$168,700 (abated to \$97,600 by the assessors)	\$76,600
Lot 11	\$381,900	\$381,900	\$421,000	\$389,100
Lot 12	\$85,600	\$85,600	\$66,000	\$29,700
Lot 13	\$81,200	\$81,200	\$67,600	\$30,200
Lot 14	\$36,000	\$36,000	\$65,500	\$29,100

### **III. The appellee's case**

Apart from the jurisdictional documents and cross-examination of the appellants' witnesses, the appellee relied upon the presumed validity of the assessments of the subject parcels for the fiscal years at issue.

### **IV. The Presiding Commissioner's findings**

The Presiding Commissioner found the appellants' appraiser's testimony and appraisal reports to be credible and reasonable. He agreed with the appellants' appraiser's income approach concerning Lot 11 Technology Drive. This resulted in an abatement for Docket

No. F337442 (Lot 11 Technology Drive, fiscal year 2019). However, because the appellants' appraiser's proposed fair cash value of \$400,000 for fiscal year 2021 exceeded the assessed value, the Presiding Commissioner granted no abatement for Docket No. F341966 (Lot 11 Technology Drive, fiscal year 2021).

The Presiding Commissioner disagreed with the appellants' appraiser's failure to allocate any value to the remaining four subject parcels, finding that these parcels had at least some value. But the Presiding Commissioner found that the appellants successfully established that the significant increases in the assessed values were unwarranted due to the various hindrances that continued to exist on these parcels. For instance, the assessed value of Lot 10 Technology Drive increased by approximately 27 percent from fiscal year 2018 to fiscal year 2019, while the assessed values of Lots 12 and 13 Technology Drive more than doubled from fiscal year 2018 to fiscal year 2019. The Presiding Commissioner found that a return to the fiscal year 2018 assessed values for Lots 10, 12, 13, and 14 Technology Drive was reasonable given the lack of any change in their hindrances and their poor marketability.

Based upon the above and the evidence of record, the Presiding Commissioner found and ruled for the appellants in Docket Nos. F337441, F337442, F337443, F337444, F337445, F341965, F341967,

F341968, and F341969, and for the appellee in Docket No. F341966.

The Board thus issued abatements as follows:

<b>FY 2019</b>					
Docket No.	<b>F337441</b>	<b>F337442</b>	<b>F337443</b>	<b>F337444</b>	<b>F337445</b>
Address	Lot 10 Technology Drive	Lot 11 Technology Drive	Lot 12 Technology Drive	Lot 13 Technology Drive	Lot 14 Technology Drive
Assessed Value	\$97,600	\$421,000	\$66,600	\$67,600	\$65,300
Tax Rate	\$18.54	\$18.54	\$18.54	\$18.54	\$18.54
Taxes Assessed	\$1,809.50	\$7,805.34	\$1,234.76	\$1,253.30	\$1,210.66
Abated Value	\$76,600	\$377,000	\$29,700	\$30,200	\$29,100
Tax Abated	\$389.34	\$815.76	\$684.13	\$693.40	\$671.15

<b>FY 2021</b>					
Docket No.	<b>F341965</b>	<b>F341966</b>	<b>F341967</b>	<b>F341968</b>	<b>F341969</b>
Address	Lot 10 Technology Drive	Lot 11 Technology Drive	Lot 12 Technology Drive	Lot 13 Technology Drive	Lot 14 Technology Drive
Assessed Value	\$85,500	\$381,900	\$85,600	\$81,200	\$36,000
Tax Rate	\$18.13	\$18.13	\$18.13	\$18.13	\$18.13
Taxes Assessed	\$1,550.12	\$6,923.85	\$1,551.93	\$1,472.16	\$652.68
Abated Value	\$76,600	N/A	\$29,700	\$30,200	\$29,100
Tax Abated	\$161.36	N/A	\$1,013.47	\$924.63	\$125.10

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## 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 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 appeals, the Presiding Commissioner found the appellants' appraiser's testimony and appraisal reports to be credible and reasonable, and he agreed with the appellants' appraiser's income approach concerning Lot 11 Technology Drive. See **Cumington School of Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board."). However, because the appellants' appraiser's proposed fair cash value for fiscal year 2021 exceeded the assessed value for fiscal year 2021, no abatement resulted for Docket No. 341966 (Lot 11 Technology Drive, fiscal year 2021).

The Presiding Commissioner disagreed with the appellants' appraiser's failure to allocate a specific value to the remaining four subject parcels. See **Bodwell Extension, LLC v. Assessors of Avon**, Mass. ATB Findings of Fact and Reports 2007-1257, 1267 ("[T]he Board is not required to believe the testimony of any particular witness or to adopt any particular method of valuation that an expert may suggest, but can accept those portions of the evidence which the Board determines have the more convincing weight.") (citations omitted). The Board has previously rejected taxpayers' claims that property had no value. In **Lareau v. Assessors of Norwell**, the Board "gave no consideration to the appellants' contention that 5.57 acres of the subject property had

no value because it was 'unusable' marshland under conservation restriction. The Board has routinely rejected taxpayers' contention that land under conservation restriction has no value." Mass. ATB Findings of Fact and Reports 2013-1066, 1084-1085 (citations omitted). See also **Abdella v. Assessors of Oxford**, Mass. ATB Findings of Fact and Reports 2009-1175, 1177 ("The appellee valued the subject property at \$322,400 for fiscal year 2007, and the appellants claimed that the subject property had no value. On October 25, 2007, the Board, after taking into consideration the oil spill and the remediation activities completed as of the relevant assessment date, issued a decision reducing the assessed value of the subject property as of January 1, 2006 to \$153,500 and granted an abatement of \$897.82. The appellants appealed this decision to the Appeals Court, which affirmed the Board's decision.") (citation omitted).

Regardless, the Presiding Commissioner was persuaded that the significant increases in assessed values were unwarranted for Lots 10, 12, 13, and 14 Technology Drive, and he found and ruled that a return to their fiscal year 2018 assessed values was reasonable given the lack of any change in these parcels' hindrances and their poor marketability. See **Bodwell Extension, LLC** at 2007-1264 ("For its part, the appellee did not present a case in the present appeal, choosing instead simply to rest on its assessment, which reflected a 36.7% increase from the fiscal year previous to the

fiscal year at issue. There was no evidence of any significant changes to the subject property or the relevant market from the previous fiscal year to the fiscal year at issue, and no evidence of market data to support the subject assessment."). See also ***Antonucci v. Assessors of North Reading***, Mass. ATB Findings of Fact and Reports 2020-16, 26 ("The Presiding Commissioner found no justification for this considerable increase in the absence of any modifications to Unit 11 and further found and ruled that its prior year assessment more accurately reflected its fair market value for the fiscal year at issue."); ***Pappas v. Assessors of Blandford***, Mass. ATB Findings of Fact and Reports 2021-168, 174 ("Concerning the developed property, the Board noted the appellant's testimony that no significant changes were made to the developed property between the prior fiscal year and the fiscal year at issue that contributed to a \$144,600 increase in the assessed value.").

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Based upon the above and the evidence of record, the Presiding Commissioner found and ruled for the appellants in Docket Nos. F337441, F337442, F337443, F337444, F337445, F341965, F341967, F341968, and F341969, and for the appellee in Docket No. F341966. The Board thus issued abatements as follows:

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**THE APPELLATE TAX BOARD**

By: /s/ Steven G. Elliott  
**Steven G. Elliott, Commissioner**

**A true copy,**

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