COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WE GROW MICROGREENS, LLC	**v.**	**BOARD OF ASSESSORS OF THE CITY OF BOSTON**

Docket Nos. F342552 & F347440

Promulgated:
May 9, 2025

These are appeals 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 Boston ("appellee" or "assessors") to abate taxes on real estate owned by and assessed to We Grow Microgreens, LLC ("appellant") for fiscal years 2021 and 2022 ("fiscal years at issue").[1]

Commissioner Bernier ("Presiding Commissioner") heard these appeals and, in accordance with G.L. c. 58A, § 1A, issued single-member decisions 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 1.34.

Daniel J. Wilson, Esq., for the appellant.

Laura Caltenco, Esq., for the appellee.

[1] The appeal for fiscal year 2022 was originally filed under the informal procedure, but within 30 days of the date of service of the informal petition, the appellee timely elected to have the appeal transferred to the formal docket. *See* G.L. c. 58A, § 7A.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

On January 1, 2020 and January 1, 2021, the relevant valuation dates for the fiscal years at issue, the appellant was the assessed owner of 35,190 square feet of improved land comprised of seven contiguous parcels, one with an address of 21 Norton Street and the other six abutting a "paper road" called Manila Avenue, in the Hyde Park neighborhood of Boston (collectively, the "subject property"). The subject property was assessed and taxed as commercial property.

For fiscal year 2021, the appellee valued the subject property at $209,599 and assessed taxes thereon, at the rate of $24.55 per thousand, in the amount of $5,145.65.[2] The appellant failed to pay the taxes timely and incurred interest on the tax assessed against each of the seven parcels. However, the tax due on each parcel was less than $5,000. Therefore, pursuant to G.L. c. 59, § 64, the Appellate Tax Board ("Board") was not deprived of jurisdiction on the basis of late payment.

The appellant timely filed abatement applications on January 19, 2021, which the appellee denied on February 16, 2021. The

[2] This amount excludes Community Preservation Act ("CPA") surcharges for each parcel.

appellant seasonably filed an appeal with the Board on May 14, 2021. Based on the foregoing, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the appeal for fiscal year 2021.

For fiscal year 2022, the appellee valued the subject property at $334,101 and assessed taxes thereon, at the rate of $24.98 per thousand, in the amount of $8,345.86.[3] The appellant timely paid the taxes due without incurring interest. On January 31, 2022, the appellant timely filed abatement applications for each parcel with the assessors, which they denied on March 22, 2022. On June 22, 2022,[4] the appellant seasonably filed an appeal with the Board. Based on the foregoing, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the appeal for fiscal year 2022.

At all relevant times, the subject property was used for horticultural purposes, specifically as an urban farm for growing vegetables for sale. The subject property was improved with a commercial greenhouse containing 4,765 square feet of gross building area, as well as two "hoop houses" and several outdoor raised garden beds.

[3] No CPA surcharges were charged against the subject property for fiscal year 2022.
[4] While the petition was stamped as having been docketed by the Board on June 30, 2022, the envelope containing the petition bore a United States Postal Service postmark of June 22, 2022. Pursuant to G.L. c. 58A, § 7, the Board considered the date of the postmark to be the date of filing.

The appellant presented its case through the testimony of co-owner Lisa Evans and the submission of documents. Ms. Evans testified that the appellant purchased the subject property in March 2019 from the City of Boston for $700, which sale was not considered to be an arm's-length transaction. Pursuant to a deed restriction and right of reversion, the appellant can make no other use of the subject property other than for urban agricultural purposes, and further, the appellant cannot sell the subject property to anyone other than another farmer. Ms. Evans also testified that the subject property's soil is contaminated with lead, and accordingly, the appellant cannot grow plants directly in the soil. She explained that the appellant must construct raised garden beds and purchase soil from off site.

The appellant also offered as evidence an appraisal report. The appraiser, however, was not presented as a witness in the hearing and thus not available for cross-examination by the appellee or questioning by the Presiding Commissioner. As will be explained further in the Opinion, the appraisal report was hearsay, and accordingly, the Presiding Commissioner placed no weight on the appraisal report.

The appellant next offered a self-prepared comparable-assessment analysis. Relying on the subject property's property record card for fiscal year 2024, the appellant adopted the

appellee's valuation of the greenhouse at $146,700.[5] Applying this value to the fiscal years at issue, the appellant deduced that the subject property's land was assessed at $62,899, or $77,859.63 per acre, in fiscal year 2021, and at $187,410, or $231,985.78 per acre, in fiscal year 2022. The appellant then compared these assessed land values to Allandale Farm in Newton. Allandale Farm consists of 33.04 acres and is certified as agricultural land pursuant to G.L. c. 61A ("Chapter 61A"), which is restricted to land that is at least 5 acres in size and that is "actively devoted to agricultural, horticultural or agricultural and horticultural uses." Pursuant to the parameters of Chapter 61A, Allandale Farm was valued at $34,000, or $1,029.02 per acre, in fiscal year 2021, and at $30,400, or $920.07 per acre, in fiscal year 2022.

The appellant recognized that only farmlands of 5 acres or more are eligible for certification and reduced valuation pursuant to Chapter 61A. However, the appellant contended that the vastly different valuations of Allandale Farm and the subject property were not warranted, where both farmlands were engaged in the same business of selling produce at comparable prices.

The appellant applied Allandale Farm's per-acre valuations to the subject property and derived the following land valuations: $833.51 for fiscal year 2021 and $745.26 for fiscal year 2022.

[5] The property record card for fiscal year 2024 included separate entries for the subject property's greenhouse and its land.

Adding $146,700 for the greenhouse, the appellant arrived at the following opinions of value for the subject property: $147,533.51 for fiscal year 2021 and $147,445.26 for fiscal year 2022.

The appellee presented its case through the testimony of Assessor Raymond Boly and the submission of documents, including the relevant jurisdictional documents.

The appellee offered as evidence an appraisal report that the assessors, including Assessor Boly, had prepared. Assessor Boly testified, and the appraisal report noted, that the assessors' valuation of the subject property for the fiscal years at issue accounted for potential soil contamination. The Presiding Commissioner found Assessor Boly's testimony to be credible.

The assessors determined that the highest and best use of the subject property was its current use as a commercial greenhouse, and they did not value the greenhouse separately from the subject property's land for the fiscal years at issue. The assessors primarily relied on the comparable-sales approach. The assessors looked for comparable sales of residential land with marginal development potential and selected five sales - four from various Boston neighborhoods and one from nearby Dedham – with land ranging in size from 2,211 square feet to 32,000 square feet. The sales occurred between May 2018 and May 2022 for sale prices ranging from $7.14 per square foot to $36.73 per square foot. After applying adjustments for features including location, time of

sale, condition of improvements, and size of property, the assessors determined a per-square-foot valuation for the subject property of $10 as of January 1, 2020, and of $11 as of January 1, 2021, yielding rounded fair cash values for the fiscal years at issue of $351,900 and $387,100, respectively. As these values are greater than the subject property's assessed values for the fiscal years at issue, the appellee opined that no abatement was due.

Assessor Boly further contended that, since the subject property is less than the required 5 acres to be considered for Chapter 61A classification, values of Chapter 61A properties are not relevant to these appeals and accordingly should not be considered.

Upon review of the evidence in the instant appeals, the Presiding Commissioner found that the appellant produced very little relevant evidence of the subject property's fair cash value. First, as testified to by Assessor Boly, the appellee's valuation of the subject property already accounted for potential contamination. Next, as previously mentioned, the Presiding Commissioner placed no reliance on the appraisal report. With respect to the appellant's self-prepared comparable-assessment analysis, the appellant used one certified Chapter 61A property. It is without contest that the subject property did not qualify as Chapter 61A land; the Presiding Commissioner thus found that the

comparison to Allandale Farm for the subject property's valuation lacked meaningful evidentiary value.

Based on the foregoing, the Presiding Commissioner found and ruled that the appellant failed to meet its burden of proving a fair cash value for the subject property that was less than its assessed value for either of the fiscal years at issue.

Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

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 upon which a willing buyer and a willing seller will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). The appellant has the burden of proving that the property 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 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 this Board, "[t]he 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the instant appeals, the appellant offered an appraisal report to support its argument that the subject property's assessed value was higher than its fair cash value for the fiscal years at issue. However, as its author was not presented as a witness, the Presiding Commissioner placed no weight on the opinions contained in the appraisal report. *See* ***Ward Brothers Realty Trust v. Assessors of Hingham***, Mass. ATB Findings of Fact and Reports 2012-515, 525

The appellant also offered a self-prepared comparable-assessment analysis. The fair cash value of property may be determined by evidence of assessed values of comparable properties. *See* G.L. c. 58A, § 12B ("At any hearing relative to the assessed fair cash valuation . . . of property, evidence as to the fair cash valuation . . . at which assessors have assessed other property of a comparable nature . . . shall be admissible."). The introduction of such evidence may provide adequate support for the granting of an abatement. ***Chouinard v. Assessors of Natick***, Mass. ATB Findings of Fact and Reports 1998-299, 307-308 (citing ***Garvey v. Assessors of West Newbury***, Mass. ATB Findings of Fact and Reports 1995-129, 135-36, and ***Swartz v. Assessors of Tisbury***,

Mass. ATB Findings of Fact and Reports 1993-271, 279-80). However, properties used in a comparable-assessment analysis must be "comparable" to the subject property, meaning that they must share fundamental similarities with the subject property. *See* ***Sterling v. Assessors of Arlington***, Mass. ATB Findings of Fact and Reports 2021-76, 93-4 (appellant bears the burden of establishing that comparable assessment properties share fundamental similarities with the subject property).

The appellant failed to prove the similarity of the subject property with its sole comparison property. Allandale Farm is a parcel larger than 5 acres that qualifies as a Chapter 61A property. As such, it does not share "fundamental similarities" with the subject property and thus is not an appropriate comparison property. Therefore, the Presiding Commissioner found and ruled that the appellant's comparable-assessment analysis lacked probative value for determining the subject property's fair cash value for the fiscal years at issue. *See* ***Gabay Realty, LLC v. Assessors of Boston***, Mass. ATB Findings of Fact and Reports 2023-112, 118.

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Based on the foregoing, the Presiding Commissioner found and ruled that the appellant failed to meet its burden of proving that the assessed value of the subject property was greater than its fair cash value for either of the fiscal years at issue. Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

THE APPELLATE TAX BOARD

By: _____
Nicholas D. Bernier, Commissioner

A true copy,

Attest: _____
Clerk of the Board