

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**KIMBERLY WILLIAMS &
NICK WAYNELOVICH**

V.

**BOARD OF ASSESSORS OF
THE TOWN OF MONTAGUE**

Docket No. F345661

Promulgated:
August 19, 2025

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 Montague ("assessors" or "appellee") to abate a tax on real estate located in Montague owned by and assessed to JaDuke, Inc. ("JaDuke") for fiscal year 2022 ("fiscal year at issue"). This appeal was filed on behalf of JaDuke by Kimberly Williams, President and Treasurer, and Nick Waynelovich, Vice-President and Secretary ("appellants").

Chairman DeFrancisco heard this appeal. Commissioners Good, Elliott, Metzger, and Bernier joined him in the decision for the appellants.

These findings of fact and report are promulgated pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.¹

Kimberly Williams, pro se, for the appellants.

Karen Tonelli, Assessor, for the appellee.

¹This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on the testimony and exhibits admitted into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2021, the relevant date of valuation and assessment for the fiscal year at issue, JaDuke was the assessed owner of a 2.098-acre parcel of real estate improved with a building located at 110 Industrial Boulevard in Montague ("subject property"). The subject property is located in an industrial park and contains a total of 23,827 square feet divided into various educational uses, including: day care; after-school programs for singing, dancing, and acting; a driving school; and music lessons. A unique aspect of the subject property is its theater space, with high ceilings and stadium seating. The theater space seats 540 people and is used for dance recitals, as well as children's concerts and plays. The appellants and their family operate all the activities at the subject property and there were no leases or rental agreements for use of the space on the relevant date of valuation. The appellants had the subject property constructed in 2019 for use in conjunction with an adjoining property that was being used for essentially the same educational purposes.

For the fiscal year at issue, the assessors valued the subject property at \$2,264,600. In accordance with a Tax Increment

Financing Agreement ("TIF agreement")² between JaDuke and the Town of Montague - the specific details of which were not entered into evidence - the taxable value of the subject property was \$1,605,170 ("TIF value") for the fiscal year at issue. Application of the tax rate of \$25.83 per \$1,000 to the TIF value resulted in a tax amount of \$41,461.54, plus a Turner Falls Fire District tax of \$6,308.32, for a total tax amount of \$47,769.86 for the fiscal year at issue. The tax was paid without incurring interest. On January 10, 2022, the appellants timely filed an abatement application with the assessors, which was deemed denied on April 10, 2022. On May 23, 2022, the assessors reduced the TIF value by \$100,000 to \$1,505,170, resulting in a partial abatement of \$2,976 off the total tax amount. On June 6, 2022, the appellants timely filed a petition with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellants' main contention was that the classroom space in the subject property was assessed far in excess of its value, particularly compared to the assessed value of similar, albeit older, space in the adjoining building. Documents in the record established that the subject property's classroom space was

² "[A]ny city or town by vote of its town meeting, town council, or city council with the approval of the mayor where required by law, on its own behalf or in conjunction with one or more cities or towns, may adopt and execute a tax increment financing agreement hereinafter referred to as a TIF agreement." G.L. c. 40, § 59. See also G.L. c. 59, § 5, Clause Fifty-first.

assessed at \$89.43 per square foot, while the classroom space in the adjoining building was assessed at \$34 per square foot.

The appellants submitted a detailed valuation analysis and testified about the sales considered in arriving at their opinion of value. The appellants considered six sales, five of which were located in the same industrial park as the subject property. The sale prices per square foot of building area for these six sales ranged from just under \$20 per square foot to more than \$60 per square foot, with an average per-square-foot value of \$43.33. The square footage of these six sales ranged from 12,066 square feet to 37,089 square feet, with an average of 22,372 square feet, compared to the subject property's 23,827 square feet.

To arrive at their opinion of value, the appellants used the \$43.33 per-square-foot average from their comparable sales to value the 8,281 square feet of classroom space in the subject property. Leaving unchanged the assessed values per square foot of all the other spaces located in the subject property besides the classroom space, the appellants determined an opinion of value for the subject property of \$1,769,432.17 for the fiscal year at issue.

For their case, the assessors submitted the jurisdictional documents into evidence and primarily relied upon the appraisal report and testimony of George E. Sansoucy, a certified general appraiser whom the Board qualified as an expert witness.

After determining that the subject property's highest and best use was its continued use, Mr. Sansoucy then considered the three usual valuation methods - the cost approach, the income-capitalization approach, and the sales-comparison approach - to arrive at his opinion of value for the subject property.

For his cost approach, Mr. Sansoucy first developed a replacement cost new for the subject property, using industry standards and cost manuals, and then deducted for physical and functional depreciation. His analysis resulted in an indicated value of \$3,338,500.

Next, Mr. Sansoucy developed an income-capitalization approach. To begin, he selected six leases of purportedly comparable theater space and four leases of purportedly comparable classroom space. Mr. Sansoucy made various adjustments to these lease comparison properties to account for differences with the subject property and selected a capitalization rate of 8.29 percent to derive a value of \$2,486,000 under his income approach.

For his sales-comparison approach, he relied upon three sales of purportedly comparable properties located in the same industrial complex as the subject property. These properties ranged in size from 14,662 square feet to 37,089 square feet, with sale prices that ranged from \$990,000 to \$1,092,000. After adjustments to account for differences between the subject property and the comparable-sales properties, Mr. Sansoucy

calculated an indicated value of \$1,886,300 under his sales-comparison approach.

To arrive at his final opinion of value, Mr. Sansoucy relied upon his value conclusions from all three approaches, giving 20 percent weight to his cost approach and 40 percent weight to both his sales-comparison approach and his income-capitalization approach. His final opinion of value for the subject property was \$2,417,000 for the fiscal year at issue.

On the basis of all the evidence, the Board found and ruled that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue. The Board found inherent limitations with both parties' valuation analyses, from the lack of adequate adjustments by the appellants to Mr. Sansoucy's reliance on a cost approach and income-capitalization approach.

Regarding Mr. Sansoucy's cost approach, there was no showing that the subject property is special purpose property or that the cost to construct the subject property was related to its value. The appellants conceded that they spent more to construct the subject property than it was worth because the appellants' family is committed to education, particularly the education of families in the community.

Regarding his income-capitalization approach, Mr. Sansoucy relied upon rents from industrial properties that were being used

for industrial operations. When questioned, he acknowledged that he did not consider the cost to convert the subject property to industrial use, which would include installation of high-bay doors and the filling in of below-grade areas that were currently in place to facilitate stadium seating

The record in aggregate, however, provided the Board with sufficient evidence to form its own judgment as to the fair cash value of the subject property for the fiscal year at issue. The Board agreed with the appellants' contention that the classroom space was significantly overvalued and that the subject property itself was overvalued. A comparison of the assessed value of the classroom space to the assessed value of the classroom space in the adjoining building, as well as consideration of Mr. Sansoucy's sales-comparison approach,³ amply supported a finding of overvaluation. After reviewing the record, the Board selected a \$50 per square foot value for the classroom space, slightly more than the similar but older classroom space in the adjoining building, while retaining the assessed values for the non-classroom spaces. This resulted in a rounded fair cash value for the subject property of \$1,825,000 for the fiscal year at issue.

To account for the effect of the TIF agreement, the Board ordered the parties - under Rule 33 of the Board's Rules of

³ The Board notes that the appellants' opinion of value (\$1,769,432.17) and Mr. Sansoucy's value derived from his sales-comparison approach (\$1,886,300) were \$116,867.90 apart, a less than 7 percent difference in value.

Practice and Procedure - to calculate the abatement amount due to the appellants. In accordance with the Board's order, the parties submitted agreed-upon calculations. Based on these calculations, the Board issued a decision for the appellants and granted an abatement in the amount of \$6,181.75, plus interest.

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 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 its assessed value. "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 reaching its opinion of fair cash value in this appeal, the Board was not required to believe the testimony of any witness or to adopt any particular method of valuation that an expert witness suggested. **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."). Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 683 (1982); **New Boston Garden Corp. v. Assessors of Boston**, 383 Mass. 456, 473 (1981); **Assessors of Lynnfield v. New England Oyster House**, 362 Mass. 696, 702 (1972). 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 Consol. Gas Co.**, 309 Mass. 60, 72 (1941). See also **New Boston Garden Corp.**, 383 Mass. at 473.

In the present appeal, the Board declined to adopt entirely either party's opinion of value. Instead, the Board considered the appellants' showing of overvaluation of the classroom space and then viewed the record in the aggregate, which afforded the Board sufficient and probative evidence to derive the fair cash value of the subject property for the fiscal year at issue. In sum, based on all the evidence presented in this appeal, and reasonable inferences drawn therefrom, the Board found and ruled that the appellants met their burden of proving that the subject property was overvalued and determined a fair cash value of \$1,825,000 for the fiscal year at issue. Accordingly, the Board found and ruled for the appellants and granted an abatement in the amount of \$6,181.75, plus statutory interest under G.L. c. 59, § 69, pursuant to the parties' agreed-upon calculations provided under Rule 33 of the Board's Rules of Practice and Procedure.

THE APPELLATE TAX BOARD

By: 
Mark J. DeFrancisco, Chairman

A true copy,

Attest: 
Clerk of the Board