

NOTICE: Summary decisions issued by the Appeals Court pursuant to M.A.C. Rule 23.0, as appearing in 97 Mass. App. Ct. 1017 (2020) (formerly known as rule 1:28, as amended by 73 Mass. App. Ct. 1001 [2009]), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 23.0 or rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

19-P-1518

STANLEY MAZURCZYK

vs.

BOARD OF ASSESSORS OF CHELMSFORD.¹

MEMORANDUM AND ORDER PURSUANT TO RULE 23.0

The taxpayer, Stanley Mazurczyk, appeals from a decision of a single member of the Appellate Tax Board (board) issued in accordance with G. L. c. 58A, § 1A, denying an abatement of the fiscal year 2018 tax assessment by the town of Chelmsford (town) on the taxpayer's real property and improvements. Concluding that the board's decision is supported by substantial evidence, we affirm.

1. Standard of review. "A decision by the board will not be modified or reversed if the decision 'is based on both substantial evidence and a correct application of the law.'"

New Cingular Wireless PCS LLC v. Commissioner of Revenue, 98

¹ The Board of Assessors did not file a brief in this appeal, nor did it respond to our request to be notified if it did not intend to file a brief. See Mass. R. A. P. 19 (e), as appearing in 481 Mass. 1642 (2019).

Mass. App. Ct. 346, 353 (2020), quoting Genentech, Inc. v. Commissioner of Revenue, 476 Mass. 258, 261 (2017).

"Substantial evidence is 'such evidence as a reasonable mind might accept as adequate to support a conclusion.'" West Beit Olam Cemetery Corp. v. Assessors of Wayland, 89 Mass. App. Ct. 677, 680 (2016), quoting Boston Gas Co. v. Assessors of Boston, 458 Mass. 715, 721 (2011).

2. Discovery. The taxpayer complains that the town failed to provide him with the documents it relied upon prior to the hearing. The taxpayer, however, presents no evidence that he sought such discovery in accordance with the rules of the board. See 831 Code Mass. Regs. §§ 1.24, 1.25.² Accordingly, this complaint provides no reason to disturb the decision of the board. Cf. Roketenetz v. Assessors of Lynnfield, 72 Mass. App. Ct. 907, 907 (2008) ("the authority of the Appellate Tax Board to issue discovery orders for the development of information material to an abatement application is clear").³

² The taxpayer apparently filed a public records request with the town prior to the initiation of the board proceeding, although the content of this request has not been provided to us.

³ The taxpayer mentions various other concerns about the procedure followed by the town's board of assessors, but he presents no evidence that he raised any of these issues before the Appellate Tax Board. See Olympia & York State St. Co. v. Assessors of Boston, 428 Mass. 236, 244-245 (1998) (not considering issue not raised before board).

3. Overvaluation. "When challenging an assessment before the board, the taxpayer bears the burden of establishing its right to an abatement of the assessed tax." Boston Gas Co., 458 Mass. at 717. "The assessment is valid unless the taxpayer sustains its burden of proving otherwise." Id. "As may any trier of fact, the board could accept or reject and pick and choose from evidence the parties present to it," provided it articulates "an objectively adequate rationale for rejection of the evidence." Turners Falls Ltd. Partnership v. Assessors of Montague, 54 Mass. App. Ct. 732, 736 (2002). "The board may permissibly accept such portions of the evidence as appear to it to be more convincing." Peterson v. Assessors of Boston, 62 Mass. App. Ct. 428, 430 (2004).

Here, the taxpayer compared his assessment to the sales or assessments of nine other properties. "The Presiding Commissioner found that the sales that the appellant used in his analysis all had substantial flaws impacting their comparability" with the taxpayer's property. As the board correctly observed, "the subject home was larger than all but one of the purportedly comparable homes, and it also included a two-car garage, while the comparable properties either had one-car garages or lacked garages altogether," and the taxpayer made

no adjustments to account for this.⁴ The one property with a similar area had one fewer bedroom, no finished basement, and no garage, and had sold for only \$10,300 less than the taxpayer's assessment more than three years before the assessment.

"The function of weighing the evidence is for the board."
Assessors of Brookline v. Buehler, 396 Mass. 520, 531-532 (1986). It was well within the board's purview to reject the taxpayer's evidence as unconvincing and conclude that the taxpayer had failed to prove that the assessment was invalid. See Peterson, 62 Mass. App. Ct. at 430; Turners Falls Ltd. Partnership, 54 Mass. App. Ct. at 736.

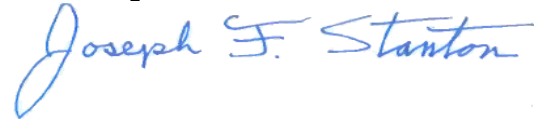
We need not decide whether, as the taxpayer contends, the town's evidence suffered similar inadequacies. Once the taxpayer fails to meet his burden, the assessment must stand.

⁴ The taxpayer asserts that the town "never advanced [the] garage issue," but he has not provided us with a transcript of the hearing to substantiate this claim. "[I]t is the appellant's responsibility to ensure that the record is adequate for appellate review." Roby v. Superintendent, Mass. Correctional Inst., Concord, 94 Mass. App. Ct. 410, 412 (2018), quoting Commonwealth v. Woody, 429 Mass. 95, 97 (1999).

See Hampton Assocs. v. Assessors of Northampton, 52 Mass. App. Ct. 110, 118-119 (2001).

Decision of Appellate Tax
Board affirmed.

By the Court (Massing,
Henry & Ditkoff, JJ.⁵),



Clerk

Entered: April 15, 2021.

⁵ The panelists are listed in order of seniority.