COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

COLE FAMILY IRREVOCABLE TRUST	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF IPSWICH**

Docket No. F349107

Promulgated:
September 26, 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 Ipswich ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to the Cole Family Irrevocable Trust ("appellant") for fiscal year 2023 ("fiscal year at issue").

Commissioner Elliott heard this appeal. Chairman DeFrancisco and Commissioners Good, Metzer, and Bernier joined him 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 1.34.

Robert Cole, *pro se*, for the appellant.

Ellen M. Hutchinson, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

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

On January 1, 2022, the relevant valuation and assessment date for the fiscal year at issue, the appellant was the owner of a single-family condominium unit situated on a 3,000-square-foot parcel of land of which the appellant has exclusive use, located at 39 Middle Road in Ipswich ("subject property").

For the fiscal year at issue, the appellee valued the subject property at $822,600 and assessed a tax thereon, at the rate of $12.23 per $1,000, in the amount of $10,060.40. The appellant timely paid the tax due without incurring interest. On January 3, 2023, the appellant timely filed an abatement application with the appellee. On April 3, 2023, the appellee granted a partial abatement, reducing the subject property's assessed value to $754,600. Not satisfied with that reduction, on June 28, 2023, the appellant seasonably filed an appeal with the Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is part of a condominium complex on the peninsula of Little Neck in Ipswich that consists of 167 units. The units are of varying sizes and conditions, and most were originally designed as fishing cabins and then seasonal cottages.

The Little Neck condominium complex is served by a common tight-tank waste treatment plant that requires pumping several times a week during the off-season and usually twice a day during the peak season, from May to August. Common amenities for the condominium complex include a basketball court, soccer field, baseball field, pickleball court, clubhouse with postal boxes, a children's playground, and a dock with moorings that are owned by the town and leased to the condominium residents.

The subject property is a one-and-a-half story and basement, wood-frame, seasonal cottage-style dwelling that was constructed in 1920 and contains a total finished area of 690 square feet, which is comprised of five rooms, including three bedrooms, as well as one half bathroom. The shower is outdoors. There is a fireplace in the living room. The subject property also includes a 252-square-foot porch surrounding the dwelling at the front and right side. The subject property is not equipped for heat or air conditioning. The subject property's condition is stated as average.

The Little Neck peninsula extends from the Great Neck neighborhood and is bound by the Ipswich River, Neck Creek, and Ipswich Bay. Each house on Little Neck has a water view, but there are varying degrees of view obstruction. The subject property does not have water frontage. It has obstructed views of the Ipswich River.

The appellant presented its case through the testimony of Christine Lally, a trustee of the appellant, and the submission of documents. Ms. Lally testified that the subject property was built by her great-grandfather for use as a seasonal cottage. The subject property has remained as originally constructed, with no insulation or heat, no drywall, exposed beams, and upstairs walls at 3/4 height. Ms. Lally testified that she or members of her family had been inside nearly every property on Little Neck and that the subject property is unique in that it has had no updates or changes since being built.

Ms. Lally completed a sales-comparison analysis using three arms'-length sales of properties on Little Neck ranging in size from 1,032 square feet to 1,703 square feet of living area. The sales occurred from July 2020 to May 2021 for prices from $649,000 to $1,275,000 with the most expensive sale as the outlier. Ms. Lally stated that the subject property is very unlike her comparison properties in that all three properties are finished, with at least two properties having heating and air conditioning and one property being a year-round residence. Ms. Lally further opined that all three properties enjoy better water views than the subject property; the appellant offered pictures taken from the subject property's interior that showed obstructed views of Ipswich River. Making no adjustments to her comparison properties, Ms. Lally derived from these sales an average sale price per square foot of $649. Applying this figure to the subject property's 690 square feet yielded an opinion of fair cash value of $447,810.

The appellee presented its case in chief and offered the testimony and appraisal report of Mark Tyburski, whom the Board qualified as an expert witness in the field of real estate valuation. Mr. Tyburski testified that he had experience in valuing waterfront and water-view properties, including properties on Little Neck. Mr. Tyburski presented an appraisal report for the subject property as well as an addendum. The appraisal of the subject property was part of an appraisal that included eight other properties in Little Neck. Mr. Tyburski testified that he made exterior inspections of many comparison properties on Little Neck and was provided with interior photographs taken by the appellee.

The addendum to Mr. Tyburski's report included an extensive analysis regarding the location of the Little Neck properties, including the subject property, and included maps coded by color with several categories for waterfront and water view with varying types of views and indicating which bodies of water. Mr. Tyburski ranked the subject property in the third highest appeal category for view. He testified that in his opinion, Little Neck properties on the east, southeast, and south side, like the subject property, had the greatest appeal. Mr. Tyburski included additional maps comparing grade and elevation and ranking the subject property in the above average and average categories, respectively. Mr.

Tyburski testified that all these factors affect a property's appeal and therefore, its ultimate value.

Mr. Tyburski performed a comparable-sales analysis using the same three comparison properties used by the appellant in its comparable-sales analysis. As previously mentioned, the sale properties ranged in size from 1,032 square feet to 1,704 square feet of living area, and they sold from July 2020 to May 2021 for prices from $649,000 to $1,275,000. Mr. Tyburski applied multiple adjustments for categories including: date of sale; water view (which considered the level of obstruction as well as the direction of the view); slope of property; age and condition of improvement; gross living area as well as the number of rooms, bedrooms, and bathrooms; and extra features. These three sales thus yielded adjusted sale values from $735,100 to $774,766. Mr. Tyburski's opinion of the subject property's fair cash value based on these adjusted sale values was $755,000, thus supporting the subject property's assessed value as abated.

According to Mr. Tyburski's analysis, the sales yielded per-square-foot sales values from $535.03 to $748.68 and per-square-foot adjusted values from $431.65 to $750.74. By comparison, the subject property's assessment as abated yielded a per-square-foot value of $1,093.62. The Board agreed with Mr. Tyburski's opinion that the value of the subject property in large measure resulted from its location on Little Neck. However, based on its own view of the subject property and of Little Neck, the Board found persuasive the appellant's testimony that the subject property was smaller, not updated since being built, and its obstructed views were inferior to several of the comparable properties cited by the parties. Even assuming, as will be explained in the Opinion, that as a property's size decreases its per-square-foot value increases, the Board found that the assessment of the subject property was not in line with these comparable properties.

The Board also noted that, cited within Mr. Tyburski's appraisal report but not utilized for the comparable-sale analysis for the subject property, was the sale at 5 Gala Way on Little Neck. This property is a 3,000-square-foot parcel improved with a seasonal cottage built in 1930 having 748 square feet of living space comprised of five rooms, including two bedrooms, and one bathroom. Amenities of this property include a fireplace, a deck, and an enclosed porch. The property has an obstructed secondary ocean view, which the Board found to be similar to the subject property. This property sold on October 31, 2022 for $725,000. The Board found this property to be a better comparison for the subject property than the properties used in Mr. Tyburski's analysis, particularly the property that sold for $1,275,000 and required adjustments amounting to 46.62 percent of its sale value.

Considering adjustments to that sale price, as well as other evidence of record, the Board found that $670,000 reflected the fair cash value of the subject property for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant granting abatement in the amount of $1,034.66.

OPINION

Assessors are required to assess real estate at its fair cash value as of the first day of January preceding the fiscal year at issue. 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). An appellant has the burden of proving that property has a lower fair cash 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)).

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. v. Assessors of Lynn***, 393 Mass.

591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the instant appeal, the appellant persuasively argued that the subject property was smaller and less updated than other properties on Little Neck, and that it had obstructed views that were inferior to several of the comparable properties cited by the parties. The appellant also presented a sales-comparison analysis. Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. ***Graham v. Assessors of West Tisbury***, Mass. ATB Findings of Fact and Reports 2007-321, 399-400 (citing ***McCabe v. Chelsea***, 265 Mass. 494, 496 (1929), *aff'd*, 73 Mass. App. Ct. 1107 (2008)). Even taking into account that smaller properties ordinarily have a higher value per square foot than larger ones (*see* APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (15^{th} ed, 172)), the Board found persuasive the appellant's argument that the per-square-foot differential between the subject property's assessed value and that of the comparison properties' sale prices was unjustifiable, considering that the subject property's views were inferior to several of the comparable properties cited by the parties.

The Board further found that the subject property's assessed value was inconsistent with the sale of 5 Gala Way, a property that was a very suitable comparison to the subject property and provided useful evidence of valuation. Considering adjustments to that sale price, as well as other evidence of record, the Board determined a fair cash value for the subject property of $670,000 for the fiscal year at issue.

In reaching its opinion of fair cash value in these appeals, the Board was not required to believe the testimony of any particular witness or to adopt any particular method of valuation. Rather, the Board could accept those portions of the evidence that the Board determined had more convincing weight. ***Foxboro Assocs. 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, Inc.***, 362 Mass. 696, 702 (1972). 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).

Having considered the record in its entirety, the Board found and ruled that the subject property's fair cash value for the fiscal year at issue was $670,000.

Accordingly, the Board issued a decision for the appellant ordering abatement in the amount of $1,034.66.

THE APPELLATE TAX BOARD

By: ______________________________
Mark J. DeFrancisco, Chairman

A true copy,

Attest: ______________________________
Clerk of the Board