

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**ROBERT B. HILLER III, TRUSTEE v.
LIVING TRUST AGREEMENT OF
ROBERT B. HILLER II**

**BOARD OF ASSESSORS OF
THE TOWN OF ROCHESTER**

Docket No. F340206

Promulgated:
January 17, 2023

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 Rochester ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Robert B. Hiller III, Trustee of the Living Trust Agreement of Robert B. Hiller II ("appellant") for fiscal year 2020 ("fiscal year at issue").

Chairman DeFrancisco heard the appeal. He was joined by Commissioners Good, Elliott, and Metzger in the decision 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 1.32.

Daniel Lloyd Clark¹, pro se, for the appellant.

Chuck Shea, Assessor, Karen Trudeau, Assessor, and Debbi Lalli, Board Member, for the appellee.

¹ The appellant filed a Power of Attorney to be represented at the hearing by Daniel Lloyd Clark.

FINDINGS OF FACT AND REPORT

Based on testimony and evidence submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2019, the appellant was the assessed owner of a 4.31-acre parcel of land improved with a single-family dwelling located at 265 Mary's Pond Road in the town of Rochester ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$553,100 and assessed a tax thereon at the rate of \$13.48 per \$1,000 in the total amount of \$7,455.79. The appellant timely paid the tax assessed without incurring interest. On December 10, 2019, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors prior to the due date of the first installment of the semi-annual actual tax bill for the subject property. On March 5, 2020, the appellee granted a partial abatement, reducing the subject property's assessed value to \$526,200. The appellant timely filed his appeal with the Board on May 18, 2020. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a 2,108-square-foot, Colonial-style, single-family residence, originally built in 1827 but updated in 1978 and containing eight rooms, including three bedrooms, as well as one full bathroom and one half bathroom

("subject home"). The subject property also includes several outbuildings, a patio, and a power generator. The subject property is located within a compound known as East Over Farm, which encompasses nearly eighty acres of land, most of which is subject to conservation easements. The subject property, both the lot and the subject home, is subject to conservation easements that prevent any further subdivision or development of new structures.

The appellant presented a valuation witness, Wayne J. Valliere, whom the Board qualified as an expert witness in the valuation of residential property. The appellant's appraiser testified and offered an appraisal report. The appellant's appraiser developed a sales-comparison analysis using three sales of purportedly comparable properties. The sale prices ranged from \$349,000 to \$752,000. One of the properties was in the same neighborhood as the subject property and the other two were located two and four miles away from the subject property.

At the high end of the range was the property at 30 Bates Road, which is in the same neighborhood as the subject property, has the same number of bedrooms and bathrooms, and at 2,016 square feet of living area and seven rooms is slightly smaller than the subject property's 2,180 square feet of living area and eight rooms. The appellant's appraiser adjusted the sale price of \$752,000 down by \$306,499, about 41%, to arrive at an adjusted sale price of \$445,501. His adjustments included the following: a

reduction of \$110,000 for location on a dead-end street; a reduction of \$90,000 for a water adjustment for a river located on the property, although the appellant's appraiser conceded that the water is not visible from the comparable property's house; and a reduction of \$75,200 for a condition grade of "good" versus the subject property's "average" condition.

The appellee presented their case through the testimony of assessor Chuck Shea ("assessor"). The assessor criticized what he viewed as the appellant's appraiser's excessive adjustments to the 30 Bates Road property. The assessor also pointed to this sale and one at 43 Bates Road - a 2.19-acre site improved with a Colonial-style home that was built in 2005 and contains 4,305 square feet of living area, consisting of four bedrooms as well as three full bathrooms and one half bathroom - which sold for \$965,000 in May 2021. Although 43 Bates Road is superior in size and quality to the subject property, the assessor used these properties to illustrate that the subject property's neighborhood of Bates and Mary's Pond Roads is a premier location in town, which commands high fair cash values. The Board found the assessor's portrayal of the neighborhood to be credible.

Based on the evidence of record, the Board found that the appellant did not advance evidence sufficient to prove a fair cash value for the subject property that was lower than its assessed value. The Board was not persuaded by the comparable-sales analysis

offered by the appellant's appraiser. The Board agreed with the assessor's credible testimony that the appellant's appraiser's adjustments for 30 Bates Road, totaling 41% of its sale value, were excessive. Regarding the other two comparable properties offered by the appellant's appraiser, they were located miles from the subject property. The Board found credible the assessor's testimony that the subject property, like 30 Bates Road, is in a premier neighborhood that commands a higher fair cash value than other neighborhoods in the town. The Board found that the appellant's appraiser failed to account adequately for the subject property's superior location in his reliance on the two sales of properties located outside of the subject property's neighborhood.

The Board thus found that the appellant failed to meet his burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee in this appeal.

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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 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 (citing ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellant's appraiser advanced a sales-comparison analysis to establish overvaluation of the

subject property. "[S]ales of property usually furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." ***Foxboro Associates v. Assessors of Foxborough***, 385 Mass. 679, 682 (1982). When comparable sales are used, however, allowances must be made for various factors that would otherwise cause disparities in the comparable properties' sale prices. See ***Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke***, Mass. ATB Findings of Fact and Reports 1998-1072, 1082.

The Board was not persuaded by the appellant's appraiser's comparable-sales analysis. The Board agreed with the assessor's credible testimony that the appellant's appraiser's adjustments for 30 Bates Road were excessive. The Board further found credible the assessor's testimony that the subject property, like 30 Bates Road, is located in a premier neighborhood that commands a higher fair cash value than other neighborhoods in the town and thus found that the appellant's appraiser failed to account for the subject property's superior location in his reliance on the two sales of properties located outside of the subject property's neighborhood. See, e.g., ***Cummington School of Arts, Inc. v. Assessors of Cummington***, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and the inferences to be drawn from the evidence are matters for the board.").

The Board thus found and ruled that the appellant failed to meet his burden of proving a fair cash value for the subject property that was lower than its assessed value for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellee.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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