

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**I G W TRUST, LEONARD F.
HALLISEY, TRUSTEE**

**v. BOARD OF ASSESSORS OF THE
TOWN OF TEWSKBURY**

Docket No. F342145

Promulgated:
June 16, 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 Tewksbury ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to I G W Trust, Leonard F. Hallisey, Trustee ("appellant" or "Mr. Hallisey") for fiscal year 2021 ("fiscal year at issue").

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

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.

Leonard F. Hallisey, Trustee, pro se, for the appellant.

Joanne Foley, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on testimony and documentary 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, 2020, the appellant was the assessed owner of a 26,850-square-foot improved parcel of land located at 54 Van Buren Road in the Town of Tewksbury ("subject property").

For the fiscal year at issue, the assessors valued the subject property at \$728,300 and assessed a tax thereon, at the rate of \$15.72 per \$1,000, in the total amount of \$11,597.03, inclusive of the Community Preservation Act ("CPA") surcharge. The appellant timely paid the tax assessed without incurring interest. On January 26, 2021, in accordance with G.L. c. 59, § 59, the appellant timely filed an abatement application with the assessors, which they denied on March 25, 2021. On April 16, 2021, 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 improved with a single-family, custom-built Cape-style dwelling that was constructed in 2018 and contains a total of 2,200 square feet of living area, which includes three bedrooms, as well as two full bathrooms and one half bathroom ("subject home").

Mr. Hallisey offered his own testimony and the submission of valuation documents. Mr. Hallisey testified that he and his wife have lived in the subject property's neighborhood for many years. The neighborhood is a subdivision that was comprised of camp sites when originally founded. Most of the camps have now been demolished and replaced with single-family residences. The appellant and his wife bought the subject land in May of 2008 for \$170,000 and subsequently built the subject home in 2018 for their retirement.

Mr. Hallisey described the subject home as a hybrid of a Cape-style and a Ranch-style dwelling with a finished attic, the purpose of which is to provide room for a caregiver should one become necessary. He testified that he was very involved in the construction of the subject home, essentially acting as the general contractor.

The appellant's primary argument is that the cost of construction for the subject home plus the cost of development for the land represent the subject property's fair cash value. Mr. Hallisey introduced an itemized list of the expenses that he incurred totaling \$391,026.51, including permit fees, demolition costs, engineering fees, irrigation, landscaping, and applicable sales and property taxes. However, Mr. Hallisey admitted that in his role as both general contractor and property owner, he was not interested in selling the property for a profit; he therefore did

not indicate a value at which he would have been willing to sell the subject property upon its completion.

The appellant's second argument is that the subject property is overvalued based on the living-area assessments per square foot of his purportedly comparable properties' homes. Mr. Hallisey introduced assessment evidence for three Colonial-style properties and seven Cape-style properties. The homes of these properties all have living areas ranging from 2,034 square feet to 2,479 square feet, similar to the subject home's living area of 2,200 square feet. For the fiscal year at issue, the subject home's living-area assessment is \$250 per square foot, while Mr. Hallisey's chosen Colonial-style homes range from \$174 to \$181 per square foot, and his chosen Cape-style homes range from \$115 to \$180 per square foot. The Colonial-style homes were from the same development as the subject property.

Based on the evidence presented, the appellant's opinion of fair cash value for the subject property is between \$575,000 and \$600,000 for the fiscal year at issue.

The assessors presented their case through the testimony of assessor Joanne Foley ("Assessor"). The Assessor stressed that the subject property is new construction, with attractive, custom-built features including a cathedral-ceiling foyer, a modern kitchen, and a grand staircase to the second floor. The Assessor also noted that the age and quality of construction and the open-

concept design of the subject home make it superior to the appellant's purportedly comparable homes.

Based on the evidence of record, the Board found and ruled that the appellant met his burden of proving that the subject property's assessed value was greater than its fair cash value for the fiscal year at issue. While the subject home was of higher quality and newer in construction compared to the appellant's comparison properties, the Board found that the discrepancy in per-square-foot assessed value between the subject property's \$250 per square foot and the appellant's comparable properties was excessive, particularly for the properties within the same neighborhood. Looking at these comparable properties as a whole and considering the differences between those properties and the subject property, including quality and age of construction of the subject home, the subject property's location, and features of the properties' parcels, the Board arrived at a fair cash value of \$670,000 for the subject property for the fiscal year at issue. The Board thus found and ruled that the subject property was overvalued by \$58,000 for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant ordering abatement of \$930.22, inclusive of the appropriate portion of the CPA surcharge.

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 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)). "[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 the instant appeal, the appellant introduced evidence of the assessed values of purportedly comparable properties to undermine the subject property's assessed value. General Laws c. 58A, § 12B provides in pertinent part that 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 ample and substantial evidence in this regard may provide adequate support for 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; **Swartz v. Assessors of Tisbury**, Mass. ATB Findings of Fact and Reports 1993-271, 279-80); see also **Turner v. Assessors of Natick**, Mass. ATB Findings of Fact and Reports 1998-309, 317-18.

While the Board agreed with the assessor's assertion that the subject home was new construction and of high quality, the Board nevertheless found that the discrepancy in assessed value per square foot between the subject property and the comparable properties was excessive. The Board compared the various features of the comparable properties and the subject property, including quality and age of construction of the subject home, the subject property's location, and features of the properties' parcels, and

found that \$670,000 represented the fair cash value of the subject property for the fiscal year at issue.

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 Consolidated Gas Co.***, 309 Mass. 60, 72 (1941). 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). Based on its review of all the evidence, the Board found and ruled that \$670,000 was the fair cash value for the subject property for the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant in this appeal and ordered abatement in the amount of \$930.22, inclusive of the appropriate portion of the CPA surcharge.

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