

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

GEORGE L. MURRAY, JR.

v.

**BOARD OF ASSESSORS OF
THE TOWN OF BOURNE**

Docket Nos. F340472 & F342055

Promulgated:
June 3, 2022

These are appeals 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 Bourne ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Bourne, assessed under G.L. c. 59, §§ 11 and 38, for fiscal years 2020 and 2021 ("fiscal years at issue").

Commissioner DeFrancisco ("Presiding Commissioner") heard these appeals under G.L. c. 58A, § 1A and 831 CMR 1.20, and issued single-member decisions 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.

George L. Murray, Jr., pro se, for the appellant.

Rui Pereira, assessor, for the appellee.

FINDINGS OF FACT AND REPORTS

Based on documentary evidence and testimony submitted by the parties during the hearing of these appeals, the Presiding Commissioner made the following findings of fact.

As of January 1, 2019 and January 1, 2020, the relevant valuation and assessment dates for the fiscal years at issue, the appellant was the assessed owner of an 11,282-square-foot parcel of vacant land in Bourne with an address of 0 Peaked Cliff Road ("subject property"). The subject property is located one block away from Cape Cod Bay. For fiscal year 2020, the appellee valued the subject property at \$199,600 and assessed a tax thereon, at a rate of \$10.74 per thousand, plus a district tax of \$0.90 per thousand and a Community Preservation Act surcharge, in the total amount of \$2,387.65. On January 18, 2020, the appellant timely filed an abatement application with the appellee, which the appellee granted in part on April 15, 2020, reducing the subject property's valuation to \$175,400. Not satisfied with that reduction in value, on June 23, 2020, the appellant seasonably filed a petition with the Appellate Tax Board ("Board"). Based on the preceding facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide the appeal for fiscal year 2020.

For fiscal year 2021, the appellee valued the subject property at \$177,100 and assessed a tax thereon, at a rate of \$10.77 per

thousand, plus a district tax of \$0.86 per thousand and a Community Preservation Act surcharge, in the total amount of \$2,116.88. On December 28, 2020, the appellant timely filed an abatement application with the appellee, which the appellee denied on January 19, 2021. On March 26, 2021, the appellant seasonably filed a Petition with the Board. Based on the preceding facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide the appeal for fiscal year 2021.

The appellant presented his case primarily through his testimony. The appellant acquired the subject property in 1963 when the zoning laws required a minimum lot size of 10,000 square feet for a buildable parcel. Thus, the subject property satisfied the lot-size requirement for building when the appellant acquired it. The appellant testified that the zoning laws subsequently changed to require a minimum lot size of 20,000 square feet. The property record cards noted that the subject property had been classified as developable land for both fiscal years at issue.

The appellant protested the subject property's sudden and considerable valuation increase during the relevant time, from \$4,900 in fiscal year 2019 to \$175,400 as abated in fiscal year 2020. The appellant testified that, when he spoke with the assessors at their office, he was informed that the change in valuation was based on a decision by the town's engineering department to deem the property developable. The appellant

testified, however, that when he attempted to gather information from the engineering department, he was told that they had no authority over valuations for property tax purposes.

In an attachment to his petition, which was introduced as an exhibit as part of the appellee's jurisdictional documents, the appellant referenced five purportedly comparable vacant properties located on Cape Cod, with one in Bourne, one in Buzzards Bay, two in Sagamore, and one in Sandwich. The properties ranged in size from 13,000 square feet to 620,037 square feet, and they were assessed from \$140,000 to \$199,900. The appellant did not indicate the valuation dates for the assessed values that he cited or the distance of these properties from the subject property.

The appellee presented their case through the testimony of assessor Rui Pereira and the submission of documents. The appellee introduced a letter from the town's engineering department to the assessor. The letter confirmed that the subject property's lot satisfied the lot-size building requirement at the time of the appellant's purchase, but that the requirement was subsequently increased to 20,000 square feet and then to the current 40,000 square-foot requirement. The letter further indicated that in 1982, the adjoining lot at 9 Hillside Avenue in Sagamore, which the appellant also owned, became merged with the subject property. The letter suggested that two parcels together could satisfy the lot-size building requirement, but that an applicant would have to

apply for a "legal determination" whether a building permit could be issued.

The appellee then submitted property record cards for neighboring properties of comparable size to the subject property. These property record cards established that other similarly sized parcels in the subject parcel's neighborhood were being assessed as buildable lots, and further, that there had been new construction in town on similarly sized lots.

Based on the evidence presented in these appeals, the Presiding Commissioner found and ruled that the appellant failed to establish that the subject property was assessed for more than its fair cash value for either of the fiscal years at issue. The appellee's evidence of other similarly sized comparable properties in Bourne that were classified as buildable and that were recently developed with single-family homes refuted the appellant's contention that the property record card's designation of the subject property as buildable was erroneous.

In addition, the purportedly comparable properties referenced in an attachment to the appellant's petition offered no support to the appellant's position. The attachment contained no assessment dates for the properties or adjustments for differences with the subject property and the appellant offered no testimony to explain how these properties supported his overvaluation claim.

Accordingly, the Presiding Commissioner ruled that the appellant failed to meet his burden of proving overvaluation and issued decisions for the appellee in these appeals.

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).

The appellant has the burden of proving that the property 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 taxpayers . . . prov[e] 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, taxpayers "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 appeals, the appellant attempted to expose errors in the valuation of the subject property by challenging the designation as buildable because of its size. However, the appellee's contradicting evidence of three comparably sized properties in Bourne that were subsequently developed refuted the appellant's contention that the property card's designation as buildable was erroneous.

Further, the appellant offered no affirmative evidence establishing his claim of overvaluation. The attachment to the appellant's petition failed to include the assessment dates for the purportedly comparable properties or any adjustments to account for differences between these properties and the subject property, and the appellant failed to explain how these properties supported his claim of overvaluation. See, e.g., **Sterling v. Assessors of Arlington**, Mass. ATB Findings of Fact and Reports 2021-76, 93-4 (appellant bears the burden of establishing that comparable assessment properties share fundamental similarities with the subject property, and the assessments must be adjusted to account for differences with the subject property.)

In sum, the appellant failed to present sufficient, credible evidence establishing overvaluation of the subject property for

the fiscal years at issue. Accordingly, the Presiding Commissioner issued decisions for the appellee in these appeals.

APPELLATE TAX BOARD

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

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