COMMONWEALTH OF MASSACHUSETTS

**APPELLATE TAX BOARD**

# PETER J. & Nadine M. Hiser v. BOARD OF ASSESSORS OF

#  THE TOWN OF DALTON

Docket No. F329048 Promulgated:   October 17, 2018

This is an appeal under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 brought by Peter J. and Nadine M. Hiser (“appellants”), from the refusal of the Board of Assessors of the Town of Dalton (“assessors” or “appellee”) to abate a tax on real estate located in the Town of Dalton (“subject property”) owned by Peter J. Hiser[[1]](#footnote-1) for fiscal year 2016 (“fiscal year at issue”).

Commissioner Rose (“Presiding Commissioner”) heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellants.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Nadine M. Hiser, pursuant to a power of attorney,* for the appellants.

*Laura Maffuccio,* assessor, for the appellee.

**FINDINGS OF FACT AND REPORT**

 On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

For the fiscal year at issue, the assessors valued the subject property at $41,300 and assessed a tax thereon, at the rate of $19.63 per thousand, in the amount of $810.72 plus an additional fire district tax of $0.98 per thousand in the amount of $40.47, for a total amount of $851.19. On December 31, 2015, Dalton’s Collector of Taxes mailed the actual tax bills for the fiscal year at issue. The two preliminary tax bills and the third-quarter tax bill were timely paid, but the fourth-quarter tax bill was not paid until May 18, 2016, thereby incurring interest. However, because the total tax due for the fiscal year at issue did not exceed $3,000, the applicable version of G.L. c. 59, § 64[[2]](#footnote-2) provided that the incurring of interest did not deprive the Appellate Tax Board (“Board”) of jurisdiction over this appeal.

On January 28, 2016, in accordance with G.L. c. 59, § 59, the appellants timely filed an application for abatement with the assessors, which they denied on March 3, 2016. On May 2, 2016, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed an appeal with the Board. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the instant appeal.

On October 24, 2017, after this appeal was filed but before the hearing, the assessors granted an abatement of real estate tax in the amount of $404.38, and an abatement of fire district tax in the amount of $20.18, representing an assessed value as abated of $20,700.

The subject property is a vacant, 8,000-square-foot parcel located on Pease Avenue. The subject property did not conform to zoning requirements as of the relevant assessment date because of insufficient frontage and would require a special permit prior to development. It was one of two remaining lots that have not been developed on Pease Avenue.

The Pease Avenue neighborhood is dominated by homes that were constructed on slab foundations due to high water tables. Improved lots on Pease Avenue that have the same area and frontage as the subject property had an assessed land value of $41,300 for the fiscal year at issue, which is the original assessed value of the subject property prior to the assessors’ abatement in value down to $20,700. Sale prices of these properties, which are improved with various styles of homes, ranged from $86,000 to $135,000.

The appellants’ principal argument is that the best evidence of value in this appeal is the $15,500 sale price that Mr. Hiser paid for the subject property in an arm’s-length transaction within a month of the January 1, 2015 valuation date, after the property had been on the market for 286 days. Mrs. Hiser, a licensed real estate broker who is familiar with the Dalton area and real estate market because of her work, appeared and testified at the hearing on behalf of her husband.[[3]](#footnote-3)

In support of her contention that the fair cash value of the subject property was the purchase price of $15,500, Mrs. Hiser offered her testimony and submitted a binder that included various documents, including a purchase and sale agreement, assignment, and deeds concerning the subject property, as well as sales and assessment data for other Dalton properties. Her testimony and the documents that she offered established the following concerning Mr. Hiser’s purchase of the subject property.

On October 13, 2014, Mr. Hiser signed a purchase and sale agreement for the subject property at a purchase price of $15,500; the agreement was countersigned by the seller, Marie Musante, on October 14, 2014.

Subsequently, on January 15, 2015, Mr. Hiser assigned his right, title, and interest in the purchase and sale agreement to Robert H. Moore, Sr. By a deed dated January 13, 2015[[4]](#footnote-4) and recorded on January 16, 2015, Ms. Musante transferred the subject property to Mr. Moore for the stated consideration of $15,500, as agreed to in the purchase and sale agreement. By deed dated January 20, 2015 and recorded on June 3, 2015, Mr. Moore transferred the subject property to Mr. Hiser “for no consideration paid as this constitutes a transfer and not sale.” The effect of the purchase and sale agreement, assignment, and deeds was that Mr. Hiser purchased the subject property within a month of the relevant valuation date for $15,500.

Mrs. Hiser further testified that the sale was an arm’s-length sale. The subject property had been on the market for 286 days at a listing price of $25,000 before Ms. Musante accepted Mr. Hiser’s offer of $15,500. Further, the assessors’ property record card for the subject property listed the sale as a “Q” sale, meaning a qualified or arm’s-length sale. There was nothing in the record to suggest that Mr. Moore’s purchase and resale of the subject property to Mr. Hiser made the sale price of $15,500 an unreliable indicator of fair cash value.

Accordingly, after considering all of the evidence, the Presiding Commissioner ultimately found and ruled that the appellants sustained their burden of proof. The Presiding Commissioner found that the purchase price of the subject property, paid within a month of the relevant valuation date and after it had been exposed to the market for 286 days, was the best evidence of value in this appeal. Accordingly, the Presiding Commissioner found that the fair cash value of the subject property for the fiscal year at issue was $15,500 and ordered an abatement in the amount of $107.18.

**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 of them are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston,*** 334 Mass. 549, 566 (1956).

Generally, the burden of proof is upon the taxpayer to prove that the subject property has a lower value than that assessed. ***Schlaiker v. Assessors of Great Barrington,*** 365 Mass. 243, 245 (1974) (citing ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting***Schlaiker***, 365 Mass. at 245).

Actual sales of the property at issue “are very strong evidence of fair market value, for they represent what a buyer has been willing to pay to a seller for [the] particular property [under appeal].” ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981) (quoting ***First Nat’l Stores, Inc. v. Assessors of Somerville,*** 358 Mass. 554, 560 (1971)). Here, the subject property was exposed to the market for a significant period of time and there was no indication that the sale was other than an arm’s-length sale. Therefore, the Presiding Commissioner found and ruled that this sale constituted relevant, persuasive evidence of the value of the subject property as of the relevant assessment date, particularly because the sale was within one month of the relevant valuation date.

The mere production of evidence is not enough to meet a taxpayer’s burden in this regard; the evidence must be credible and persuasive. *See* ***Foxboro Assocs. v. Assessors of Foxborough,*** 385 Mass. 679, 691 (1982). In the present appeal, the Presiding Commissioner found and ruled that the appellants’ evidence was reliable, credible, and persuasive.

In reaching his decision in this appeal, the Presiding Commissioner was not required to believe the testimony of any particular witness or adopt any particular method of valuation that a witness suggested. Rather, the Presiding Commissioner could accept those portions of the evidence that he determined had more convincing weight. ***Foxboro Assocs.***, 385 Mass. at 683; ***New Boston Garden Corp.,*** 383 Mass. at 473; ***New England Oyster House, Inc. v. Assessors of Lynnfield,*** 362 Mass. 696 (1972). “The credibility of witnesses, the weight of evidence, the inferences to be drawn from the evidence are matters for the board.” ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977).

On this basis, the Presiding Commissioner found that the fair cash value of the subject property for the fiscal year at issue was $15,500 and ordered an abatement in the amount of $107.18.

        **THE APPELLATE TAX BOARD**

 **By: \_\_\_\_\_\_\_\_\_\_\_         James D. Rose, Commissioner**

**A true copy,**

**Attest: \_**

 **Clerk of the Board**

1. Although this appeal was filed by both Peter J. and Nadine M. Hiser as appellants, only Mr. Hiser owned record title to the subject property. [↑](#footnote-ref-1)
2. Effective for fiscal years beginning with fiscal year 2017, the $3,000 jurisdictional amount in G.L. c. 59, § 64 was increased to $5,000. *See* St. 2016, c. 218, 149. [↑](#footnote-ref-2)
3. Mr. Hiser had given Mrs. Hiser a limited power of attorney to represent him at the hearing. [↑](#footnote-ref-3)
4. The signing of the deed predated the assignment because the deed was mailed to Massachusetts prior to the closing; the grantor, Ms. Musante, was a resident of Virginia and, according to the notary public acknowledgement, the deed was signed in Virginia. [↑](#footnote-ref-4)