COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ERNEST W. PIERCE III, LIFE TENANT	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF ROCHESTER**

Docket No. F344734

Promulgated:
April 24, 2024

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65 concerning real property located in the Town of Rochester owned by the Pierce Family Realty Trust, of which Ernest W. Pierce III ("appellant") is the Life Tenant, specifically the refusal of the Board of Assessors of the Town of Rochester ("assessors" or "appellee") to value portions of this property under the provisions of G.L. c. 61A for fiscal year 2023 ("fiscal year at issue").

Chairman DeFrancisco heard this appeal. He was joined by Commissioners Good, Elliott, Metzer, and Bernier in a 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 1.32.[1]

Ernest W. Pierce, III, pro se, for the appellant.

Karen Trudeau, assessor, and *Jana Cavanaugh*, board member, for the appellee.

[1] This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence at 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 Pierce Family Realty Trust was the assessed owner of a parcel of land consisting of 14.24 acres located at 478 Snipatuit Road in Rochester ("subject property"). Historically, the entire subject property, together with the adjoining 10.02 acres of land also owned by the appellant, had been classified as agricultural/horticultural land under G.L. c. 61A ("Chapter 61A"). For the fiscal year at issue, the appellee removed portions of the subject property from classification. The appellant agreed with the declassification of the 1.5-acre portion of the subject property that contains a residence ("prime site"). At issue in this appeal is 1.35 acres consisting of: 0.75 acres identified as "access and frontage"; 0.39 acres identified as "residual land"; and 0.21 acres identified as "wetland" (collectively, "disputed acreage").

On September 23, 2021, the appellant timely filed with the assessors his Chapter 61A classification application for the subject property for the fiscal year at issue. On December 13, 2021, the assessors approved his application in part and denied it with respect to the prime site and the disputed acreage. The

appellant timely filed an application to modify the assessors' decision on January 4, 2022, which the assessors denied on January 10, 2022. The appellant seasonably filed his petition with the Board on February 8, 2022. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal. *See* G.L. c. 61A, §§ 9, 19; G.L. c. 59, §§ 64, 65.

The appellant presented his case through his testimony and the submission of documents. The appellant testified that he uses the access and frontage area to grow apple, pear, and black walnut trees, and that he sells this produce as well as lumber from the black walnut trees. He further testified that he harvests hay in this portion of the subject property. With respect to the residual and wetland portions, the appellant testified to various agricultural and horticultural uses of those areas in support of the classification of the subject property. The Board found the appellant's testimony to be credible.

Together with his testimony, the appellant also introduced a letter from a former Chief of the Department of Revenue's Property Tax Bureau, addressed to assessors of a different municipality, regarding Chapter 61A classification for property that includes a residence. The author therein asserts that the portion of land that contains a family dwelling and is regularly used for "family living" must be excluded from Chapter 61A classification. However,

for the remainder of the property, its actual use, not its zoning, is the determinative criterion for Chapter 61A classification:

> With respect to the amount of land to be excluded from classification, we have advised assessors that it is the actual use of the land which is determinative and not what is specified for residential zoning. . . . In any event, the critical test is the actual use of the land.

(emphasis in original). The appellant credibly maintained that the disputed acreage is used for agricultural/horticultural purposes, not for family living.

The appellee presented its case in chief through the testimony of Assessor Karen Trudeau and Board Member Jana Cavanaugh. With respect to the access and frontage area, the appellee did not challenge the land's use for agricultural or horticultural purposes. Rather, the appellee posited the following scenario: should the appellant someday convert the subject property to a different use, the Town would have a right of first refusal to purchase it. *See* G.L. c. 61A, § 14. The Town might then wish to convert it to residential use, but without frontage, the subject property would be non-conforming under applicable zoning laws. Therefore, the appellee argued, the access and frontage portion should not be eligible for Chapter 61A classification because it would be required for a residential use under applicable zoning.

With respect to the remaining residual and wetland areas of the subject property, the appellee contended that the appellant failed to demonstrate that these portions were used for

agriculture/horticultural purposes. However, the appellee's witnesses had no knowledge of the actual uses of these portions of the subject property. Therefore, the Board did not find the witnesses' testimony to be probative.

Based on the evidence of record, the Board found and ruled that the appellant established that he used the disputed acreage for agricultural and horticultural purposes in keeping with the requirements of Chapter 61A.

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

OPINION

Land which is "actively devoted to agricultural, horticultural or agricultural and horticultural uses" shall be subject to real estate tax under a separate statutory scheme. G.L. c. 61A, § 4.

The appellant advanced evidence sufficient to meet his burden of proving that the disputed acreage was "actively devoted to agricultural, horticultural or agriculture and horticultural uses," and the appellee did not credibly refute that evidence. The Board thus found and ruled that the appellant met his burden of demonstrating facts sufficient to prove that the disputed acreage qualified for Chapter 61A treatment. *See* ***New Boston Garden Corp. v. Assessors of Boston,*** 383 Mass. 456, 470 (1981) ("evidence of a

party having the burden of proof may not be disbelieved without an explicit and objectively adequate reason") (quoting L.L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 607 (1965)).

Additionally, the appellant advanced sufficient legal reasons to support the access and frontage portion's eligibility for Chapter 61A classification. The assessors removed this area from classification based on their reading of G.L. c. 61A, § 15, which excludes "all land occupied by a dwelling or regularly used for family living." The assessors' theory is that, because frontage is required for a residentially zoned lot, then the access and frontage area should be excluded from classification as Chapter 61A property. However, the appellee's narrow reading of § 15, which disregards the actual usage of the land, is inconsistent with the plain wording of § 4. Section 4 includes all property that is "actively devoted" to an agricultural or horticultural use, directing that the actual use of the land determines its Chapter 61A classification. *See* ***Massachusetts Broken Stone Co. v. Weston***, 430 Mass. 637, 640 (2000)("Where the language of a statute is clear, courts must give effect to its plain and ordinary meaning and the courts need not look beyond the words of the statute itself.").

Moreover, the appellee's theory relies on a series of hypothetical scenarios -- a discontinuation of Chapter 61A classification, the town's purchase of the subject property, and

its subsequent conversion to residential use. The Board ruled that the appellee's construction of Chapter 61A as applying to a property's hypothetical use, rather than its actual use, was misplaced.

The appellee cited no authority for its position. The appellant, on the other hand, submitted a letter from the former Chief of the Property Tax Bureau addressing a similar classification scenario that supported his position. The Board found the interpretation contained in the letter properly construed the relevant statutory provision.

Based on the evidence of record, the Board found and ruled that the disputed acreage qualified for Chapter 61A treatment during the fiscal year at issue.

Accordingly, the Board issued a decision for the appellant.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board