

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**CHRISTOPHER A. AND JILL A.
POMPI**

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

Docket Nos. F337285 & F339581

Promulgated:
October 4, 2021

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 Adams ("assessors" or "appellee") to abate taxes on certain real estate located in the Town of Adams owned by and assessed to Christopher and Jill Pompei ("appellants") for fiscal years 2019 and 2020 ("fiscal years at issue").

Commissioner Good ("Presiding Commissioner") heard these appeals and, pursuant to G.L. c. 58A, § 1A and 831 CMR 1.20, issued a single-member decision for the appellee with respect to each appeal.

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

Christopher and Jill Pompei, pro se, for the appellants.

Donna MacDonald, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

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

I. Introduction and Jurisdiction

On January 1, 2018, and January 1, 2019, the relevant valuation dates for the fiscal years at issue, the appellants were the assessed owners of property located at 1 Kingsmont Lane in Adams ("subject property").

The subject property is improved with an oversized ranch house ("subject residence") on a 0.53-acre lot overlooking Mount Greylock. The subject residence was built by the appellants in 2010 and contains 2,103 square feet of finished living area (3,087 square feet including the finished basement), with three bedrooms and two and a half bathrooms. The subject property also features a two-car garage and an above-ground swimming pool.

The assessors valued the subject property at \$374,200 for fiscal year 2019 and assessed a tax thereon at the rate of \$21.39 per \$1,000 in the amount of \$8,004.14. The appellants paid the tax due without incurring any interest. The appellants filed an application for abatement on November 8, 2018, for fiscal year 2019, which was denied by the assessors on January

23, 2019. The appellants filed a petition for fiscal year 2019 with the Appellate Tax Board ("Board") on February 20, 2019.

The assessors valued the subject property at \$374,200 for fiscal year 2020 and assessed a tax thereon at the rate of \$21.88 per \$1,000 in the amount of \$8,187.50. The appellants paid the tax due without incurring any interest. The appellants filed an application for abatement on November 4, 2019, for fiscal year 2020, which was denied by the assessors on November 26, 2019. The appellants filed a petition for fiscal year 2020 with the Board on January 7, 2020.

Based upon these facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide these appeals.

II. The Appellants' Case

The appellants presented testimony and submitted numerous documents into evidence to support their valuation analysis, including pictures and property record cards of purportedly comparable properties.

The appellants calculated the subject residence's per-square-foot building value at \$154, using the finished living area of 2,103 square feet (\$323,500 assessed building value/2,103 square feet). The appellants then compared the subject residence's per-square-foot building value of \$154 to the per-square-foot building values of three other residences in

Adams: 165 East Road, a three-bedroom, one-and-a-half-bathroom property built in 1981 and valued at \$110 per square foot (\$170,300 assessed building value/1,548¹ square feet); 6 East Orchard Terrace, a three-bedroom, one-and-a-half-bathroom property built in 1996 and valued at \$94 per square foot (\$130,500 assessed building value/1,400 square feet); and 5 Kingsmont Lane, a four-bedroom, two-and-a-half-bathroom property built in 2006 and valued at \$119 per square foot (\$372,300 assessed building value/3,132 square feet).² Relying on their reasoning that the subject residence and 165 East Road were both constructed by the same builder with similar finishes, the appellants sought a per-square-foot building value of \$110 for the subject residence, amounting to a \$231,330 building value for each of the fiscal years at issue (2,103 square feet at \$110 per square foot).

As further support for their building-valuation analysis, the appellants submitted into evidence a "Supplemental Building Valuation Analysis" of what they considered "the nicest house in town" - 21 Town View Lane, a three-bedroom, three-bathroom property built in 2002. They compared that property's per-square-foot building value of \$62.85 (\$498,800 assessed building

¹ The property record card indicates 1,585 square feet.

² These values were derived from the fiscal year 2019 property record cards offered into evidence by the appellants.

value/7,936 square feet)³ to the subject residence's \$154 per square foot building value and contended that "[a]s you can see this comparison further shows that our [square foot] cost is unrealistic when compared to other valuations in town."

The appellants also conducted a land-valuation analysis, relying upon 165 East Road, 0.28 acres with an assessed land value of \$40,600; 6 East Orchard Terrace, 0.31 acres with an assessed land value of \$41,300; 5 Kingsmont Lane, 18.2 acres with an assessed land value of \$88,600; and 0 East Orchard Terrace, 0.36 acres with an assessed land value of \$21,500 (this property comprised only land with no buildings).⁴ The appellants asserted that these lots all have views similar to the subject property and are all located in the same part of town with similar neighborhoods. They claimed that the maximum land value for the subject property should be \$41,300, as with 6 East Orchard Terrace, rather than the assessed land value of \$50,700, but they also suggested that the land value for the subject property should be more in line with the land value of 0 East Orchard Terrace at \$21,500.

The appellants concluded a fair market value of \$272,630 for the subject property for each of the fiscal years at issue,

³ This value was derived from the fiscal year 2018 property record card offered into evidence by the appellants.

⁴ These values were derived from the fiscal year 2019 property record cards offered into evidence by the appellants.

based upon a building value of \$231,330 and a land value of \$41,300.

III. The Assessors' Case

In addition to the testimony of assessor Donna MacDonald, the appellee submitted into evidence jurisdictional documents, property record cards, sales comparisons for each of the fiscal years at issue, a narrative, and various other documents to support its assessments.

The assessors differentiated various neighborhoods in Adams, explaining that the subject property is located in a development in Adams on Kingsmont Lane. Homes in this development are larger and newer, according to the assessors, as are homes in another development called Hoxie Brook. Both developments offer mountain views and are located on public ways with town water and sewer. The assessors noted that properties located in another development in town - East Orchard Terrace - are not valued as high because the road is not finished, water and sewer are not accessible, and the homes that have been built are not as expansive as those built on Kingsmont Lane and Hoxie Brook. The assessors presented the fiscal year 2019 assessed values for several other properties located on Kingsmont Lane and Hoxie Brook, ranging in square footage from 2,792 square

feet to 3,960 square feet and in assessed values from \$392,200 to \$485,500, all higher than the subject property's assessed value of \$374,200 for each of the fiscal years at issue.

The assessors also offered purportedly comparable sales for each of the fiscal years at issue. For fiscal year 2019, their comparable sales of town properties that sold in 2017 ranged from \$166,500 (for a three-bedroom, two-bathroom property built in 1998 with 1,146 square feet of total finished area) to \$495,000 (for a three-bedroom, three-and-a-half-bathroom property built in 2009 with 2,203 square feet of total finished area). For fiscal year 2020, their comparable sales of town properties that sold in 2018 ranged from \$193,000 (for a four-bedroom, one-and-a-half-bathroom property built in 1969 with 1,224 square feet of total finished area) to \$260,000 (for a three-bedroom, one-and-a-half-bathroom property built in 1966 with 1,518 square feet of total finished area and for a three-bedroom, three-bathroom property built in 1970 with 1,652 square feet of total finished area).

IV. The Presiding Commissioner's Findings

Based upon the record in its entirety, the Presiding Commissioner found that the appellants failed to meet their burden of proof of establishing that the assessed values of the subject property exceeded its fair cash value for the fiscal years at issue. The appellants made no adjustments to any of

their purportedly comparable properties - most of which are much older than the subject property - to account for differences between the comparable properties and the subject property. The property at 165 East Road, which the appellants relied upon conclusively for a \$110-per-square-foot building value, is almost thirty years older than the subject property. The appellants also failed to take into account the principle that as size increases, unit values generally decrease. The properties at 5 Kingsmont Lane and 21 Town View Lane, while closer in age to the subject property, are substantially larger and expectedly lower in value per square foot than the subject property. The appellants' land-value comparable properties were similarly devoid of any quantitative or qualitative depth of comparison. Further, the appellants' individual land- and building-valuation analyses failed to establish how the assessments as a whole exceeded fair cash value. The relevant question is not whether either the land or building values are excessive, but rather whether the overall assessments are excessive.

While the Presiding Commissioner found that the assessors' purportedly comparable properties also lacked usefulness due to the absence of any adjustments, she found persuasive value in the assessors' explanation as to why the assessments of properties located in certain developments - such as the

Kingsmont development where the subject property is located - were higher than the assessments of properties located in other developments.

Based upon the above and the record in its entirety, the Presiding Commissioner decided these appeals for the appellee.

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

Taxpayers have 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 that 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, 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 these appeals, the appellants failed to present any reliable or credible proof of overvaluation. The properties selected by the appellants were not demonstrably comparable, many being either older or larger than the subject property. See **Assessors of Lynnfield v. New England Oyster House, Inc.**, 362 Mass. 696, 703 (1972) ("[E]vidence of assessments imposed on other property claimed to be comparable in nature to the subject property is largely a matter within the discretion of the board."); **Frei v. Assessors of Holland**, Mass. ATB Findings of Fact and Reports 2014-765, 772 ("The properties used in the analysis must be comparable to the subject property in order to be probative of fair cash value.").

Further, the appellants did not attempt to make any adjustments for any differences between the selected properties and the subject property, as well as for economies of scale. See **Silvestri v. Assessors of Lowell**, Mass. ATB Findings of Fact and Reports 2012-926, 935 ("Purportedly comparable properties used in a comparable-sales or comparable-assessments analysis must be

adjusted for differences with the subject property. . . . Without appropriate adjustments the values assigned to the purportedly comparable properties do not provide reliable indicators of the subject property's fair cash value.") (citations omitted); **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 402-03 (holding that the taxpayers "did not . . . provide a coherent and detailed comparable sales analysis" and "[c]onsequently, the Board found and ruled that the appellants' comparable assessment methodology was spurious and any values derived from it were hollow and unfounded"), *aff'd*, 73 Mass. App. Ct. 1107 (2008) (decision under Rule 1:28); **Lewis v. Assessors of Lowell**, Mass. ATB Findings of Fact and Reports 2015-182, 187 ("[P]er-square-foot sale prices typically decline with increases in living area."); **Boquist v. Assessors of Lincoln**, Mass. ATB Findings of Fact and Reports 2014-704, 715 ("[T]he appellant failed to take into consideration the well-established principle of diminishing returns with increases in unit size. The subject property's prime lot was significantly smaller than those of his comparison properties, and it was therefore logical that it would be valued at a higher value per square foot."); **Appraisal Institute, THE APPRAISAL OF REAL ESTATE** 172 (15th ed., 2020) ("Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.").

While the assessors also failed to make any necessary adjustments to their purportedly comparable properties, the Board found persuasive value in the assessors' explanation as to why the assessments of properties located in certain developments were higher than the assessments of properties located in other developments. See **Cumington School of Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board.").

The appellants also failed to establish how the assessments as a whole were excessive. They conducted individual land- and building-valuation analyses, but never concluded how the individual components taken together contributed to the overall assessments exceeding fair market value for each of the fiscal years at issue. See **Lang v. Assessors of Marblehead**, Mass. ATB Findings of Fact and Reports 2019-385, 396 (holding that "[t]he tax on a parcel of land and the building thereon is one tax' and the ultimate conclusion is whether 'that single assessment is excessive'" and that a "taxpayer does not establish a right to an abatement merely by showing that either the land or a building is overvalued' but rather that the assessment including both components is excessive") (citations omitted).

Based upon the above and the record in its entirety, the Presiding Commissioner found and ruled that the appellants failed to establish that the fair market values of the subject property were less than the assessed values for each of the fiscal years at issue. Accordingly, she issued a decision for the appellee in both docket numbers.

THE APPELLATE TAX BOARD

By: /s/ Patricia M. Good
Patricia M. Good, Commissioner

A true copy,

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