

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

EDWARD S. & ANN F. TURNER

v.

BOARD OF ASSESSORS OF THE  
TOWN OF LUNENBURG

Docket No. F313007

Promulgated:  
July 10, 2012

This is an appeal 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 Lunenburg ("assessors" or "appellee") to abate taxes on certain real estate in Lunenburg, owned by and assessed to Edward S. and Ann F. Turner ("appellants"), under G.L. c. 59, §§ 11 and 38, for fiscal year 2011 ("fiscal year at issue").

Commissioner Mulhern heard this appeal. Chairman Hammond and Commissioners Scharaffa, Rose and Chmielinski joined him in the decision for the appellee.

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

*Edward S. and Ann F. Turner, pro se*, for the appellants.

*Jeffrey Blake, Esq.*, for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2010, the appellants were the assessed owners of a 3.32-acre parcel of land improved with a single-family, Colonial-style dwelling located at 322 Northfield Road in Lunenburg ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$615,200 and assessed a tax thereon, at the rate of \$16.16 per thousand, in the total amount of \$9,941.63. The appellants timely paid the tax due without incurring interest and timely filed an Application for Abatement with the assessors, which was denied on March 1, 2011. The appellants timely filed an appeal with the Board on May 26, 2011. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The appellants purchased the subject property in January of 2005. The two-and-a-half-story dwelling on the subject property was built circa 1762 and contains 5,280 square feet of living area, including seven bedrooms as well as five bathrooms. The subject property's features include an attached four-car garage, two fireplaces, and an updated kitchen.

The appellants argued that the assessed value of the subject property exceeded its fair cash value for the fiscal year at issue. In support of this argument, they introduced two bank appraisals ("appraisals") and property valuation data from Zillow.com.<sup>1</sup>

The first appraisal offered by the appellants, dated November 24, 2009, was prepared by Joshua B. Nicholson of Pioneer Appraisals Inc. That appraisal derived a value for the subject property of \$610,000. The second appraisal, conducted in November 2010, valued the subject property at \$600,000. It was prepared by Drew Dallin of White Birch Real Estate. Both appraisers employed a comparable-sales valuation methodology incorporating adjustments to their chosen properties to account for differences with the subject property. Neither appraiser was present or testified at the hearing.

The appellants also presented an undated "screenshot" from Zillow.com that showed a value range for the subject property of \$388,000 - \$648,000, with an estimated value of \$531,000. Based on the data underlying the estimates contained in this screenshot, the appellants argued that the subject property's

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<sup>1</sup> <http://www.zillow.com> is a website which describes itself as a "free online real estate marketplace that provides information on every aspect of real estate" based on a database that includes information from public and user-submitted data.

value was \$545,000, less an adjustment for repairs discussed *infra*, as of the relevant assessment date.<sup>2</sup>

The Board limited the appraisals' admissibility and allowed into evidence only the undisputed factual descriptions contained in the reports, excluding the appraisers' opinions of value and the adjustments on which they based their opinions. The Board rejected these elements of the appraisals because they lacked adequate foundation, were unsubstantiated hearsay, and the authors were not present at the hearing and available for cross-examination by the assessors or for questioning by the Board. Consequently, the Board was not able to determine the basis for the appraisers' adjustments and conclusions, including their opinions of the subject property's fair cash value. On this basis, the Board afforded virtually no weight to the appraisal reports.

The Board found that the Zillow.com data suffered from infirmities similar to those of the appraisals. The Board therefore found that the data were of little if any probative value in determining the fair cash value of the subject property.

Finally, the appellants stated that they had replaced the old knob-and-tube-type wiring in the subject property prior to

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<sup>2</sup> The Board noted that while the appellants introduced the appraisals in support of their claim for abatement, they seemed to rely almost entirely on data from Zillow.com, which yielded a substantially lower valuation estimate than either of the appraisals.

the relevant assessment date at a cost of \$18,000 and argued that this cost should be accounted for in the subject property's valuation. More specifically, the appellants reduced their estimate of value by \$18,000 to arrive at a final value of \$527,000. The Board found no support for the appellants' argument, and the appellants provided none. To the contrary, completed improvements to real property are likely to enhance rather than diminish the value of the property.

For their part, the assessors presented the requisite jurisdictional data and rested on the presumed validity of the assessment.

On the basis of all of the evidence, the Board found and ruled that the appellants failed to establish that the fair cash value of the subject property as of the assessment date for the fiscal year at issue was less than its assessed value. For the reasons discussed above and in the following Opinion, the Board rejected the valuations found in the appraisals and derived from the Zillow.com data as well as the claimed adjustment for updates to the subject dwelling's electrical wiring. Accordingly, the Board issued a decision for the appellee in this appeal.

## 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).

An assessment is presumed valid unless the taxpayers sustain the burden of proving otherwise. See *Foxboro Associates v. Assessors of Foxborough*, 385 Mass. 679, 691 (1982); *Schlaiker v. Assessors of Great Barrington*, 365 Mass. 243, 245 (1974). 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. v. Assessors of Lynn*, 393 Mass. 591, 600 (1984) (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellants' assertion of overvaluation was dependent upon the appraisals and to a much greater extent data gleaned from Zillow.com. The Board found and ruled that while undisputed factual information contained in the appraisals was admissible, the appraisers' opinion of value and the adjustments upon which their opinions were based were not.

The Board found and ruled that these portions of the appraisals were unsubstantiated hearsay, and were offered without proper foundation and without providing the assessors an opportunity for cross-examination or the hearing officer an opportunity for questioning. The Board therefore rejected the appraisers' adjustments and opinions of value and gave the appraisal reports virtually no weight. See, e.g., **Papernik v. Assessors of Sharon**, Mass. ATB Findings of Fact and Reports 2011-600, 615 ("hearsay information was opinion evidence, which, although not objected to by the assessors, was offered without proper foundation, qualification, or underlying factual support and without providing the assessors with an opportunity for cross-examination. Accordingly, the Presiding Commissioner gave it no weight.")

The Board rejected the appellants' estimate of value derived from Zillow.com data for similar reasons, including but not limited to the absence of proper foundation, underlying factual support and the lack of an opportunity for cross-examination. See **Michael P. Miller & Sheila Noyes-Miller v. Assessors of Sturbridge**, Mass. ATB Findings of Fact and Reports, 2012-643, 655 (affording no weight to the "opinion of the value" of the subject property contained in a Zillow.com print-out). In sum, the Board found that the Zillow.com data was of virtually no probative value and afforded it no weight.

The Board also found no basis for the appellants' contention that they were entitled to a reduction in the assessed value of the subject property because they had installed new wiring. Indeed, improvements that enhance the functional utility of property typically have a positive effect on the property's value. See, e.g., APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 262-265 (13<sup>th</sup> ed., 2008).

Based on the foregoing, the Board found and ruled that the appellants neither presented persuasive evidence of overvaluation nor introduced affirmative evidence of valuation of the subject property that undermined the assessors' valuation. Accordingly, the Board found and ruled that the appellants failed to meet their burden of proving that the fair cash value of the subject property was less than its assessed value for the fiscal year at issue and issued a decision for the appellee.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas W. Hammond, Jr., Chairman

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board