

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**KENNETH T. BAINBRIDGE
REALTY TRUST**

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

Docket No. F258990

Promulgated:
February 14, 2003

This is an appeal filed under the formal procedure pursuant to G.L. c. 58A, § 7 and c. 59, §§ 64 and 65, from the refusal of the appellee Board of Assessors to abate a tax on certain real estate located in the town of Chilmark, owned by and assessed to the appellant under G.L. c. 59, §§ 11 and 38, for fiscal year 2001.

Commissioner Rose heard the appeal and was joined by Commissioners Scharaffa, Gorton, and Egan in a decision for the appellee.

These findings of fact and report are promulgated simultaneously with the decision of the Board pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

Joan B. Safford, co-Trustee, for the appellant.

Ronald H. Rappaport, Esq., for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2000, the Kenneth T. Bainbridge Real Estate Trust ("the appellant") was the assessed owner of a parcel of real estate located at 15 South Abel's Hill Road, Chilmark ("the subject property"). For fiscal year 2001 ("the fiscal year at issue"), the Board of Assessors ("assessors") valued the subject property at \$2,144,200 and assessed a tax at the rate of \$1.96 per thousand, in the amount of \$4,202.63. The appellant timely paid all taxes due.

On November 29, 2000, the appellant timely filed an application for abatement with the assessors. The assessors denied the application on December 20, 2000, and on March 19, 2001, the appellant seasonably filed an appeal with the Appellate Tax Board ("Board"). On the basis of these facts, the Board found that it had jurisdiction over the subject appeal.

The subject property is a 1.2-acre parcel of property located in the town of Chilmark on the island of Martha's Vineyard. The subject property is within walking distance of the beach and has an uppermost elevation that is 37.5 feet above sea level. The subject property is located in an R-1 zoning district that requires a lot size of at least three acres to be developable. The subject property

is less than half the minimum acreage but is a "grandfathered" R-1 lot. Accordingly, the parcel is considered developable but the size, location and height of any dwelling is restricted.

Located on the property is a prefabricated "Hodgson House," erected in 1965, with three bedrooms and one bath. There is a deck that runs the rear length of the house and wraps around one side, offering views of both the Atlantic Ocean and the Chilmark Pond. There is also an outdoor shower. The property is accessible via two private roadways open to residents only.

Ms. Joan Bainbridge Safford, co-trustee of the appellant, testified on its behalf. In support of the appellant's contention that the subject property was overvalued for the fiscal year at issue, Ms. Safford cited three sales of properties which, like the subject, are located on Abel Hill Road.

Ms. Safford first cited Lot 222, which she testified was a 1.1-acre vacant lot located adjacent to the subject property. She noted that this lot has the same zoning as the subject property and the same restrictions on development due to its "grandfathered" non-conforming status. Further, she maintained that this vacant lot sold in the spring of 2000 for \$1.1 million.

Next, Ms. Safford testified that Lot 204 is a 3.4-acre parcel improved with a single-family dwelling and includes beach land. She testified that this property sold in 1999 for only \$1.8 million.

For her final sale, Ms. Safford testified that Lot 215 is a 1.6-acre parcel improved with a single-family dwelling. She maintained that this property sold in 1999 for \$1.8 million.

However, Ms. Safford failed to offer into evidence any supporting documentation for these transactions. She produced no deeds or any other evidence to support her testimony that the properties sold at the prices and times she alleged. Further, her credibility regarding the accuracy of her sales data was effectively challenged both on cross-examination and by evidence offered by the assessors' witness. In addition, Ms. Safford failed to consider whether the sale price of Lot 222 was affected because it was sold to an abutter.

Ms. Safford also attempted to show overvaluation by comparing the subject property's assessment with the assessed values of other properties located on Abel Hill Road. Specifically, she referenced four properties that she claimed had more land at higher sea levels, arguably offering superior views. She claimed that these properties

were all assessed at lower values than the subject property. Again, Ms. Safford failed to offer any corroborating evidence to support her recitation of assessed values and her credibility concerning them was effectively impeached on cross-examination.

In support of the assessment, the assessors offered into evidence the testimony and appraisal report prepared by Kevin Spellman, a Massachusetts certified real estate appraiser since 1993. Over the years, Mr. Spellman has conducted several thousand appraisals on Martha's Vineyard. In calculating his estimate of fair cash value for the subject property as of January 1, 2000, Mr. Spellman relied on the Sales Comparison Approach. He reviewed numerous deeds for sales of properties and ultimately relied upon three particular sales. Notably, one of the sales on which he relied, Lot 215, was also cited by Ms. Safford. As noted in Mr. Spellman's report, Lot 215 is located in very close proximity to the subject property and is only 0.4 acres larger. He further noted, after reviewing the deed, that this property sold on June 29, 1999 for \$2,208,000, roughly \$400,000 more than the selling price suggested by Ms. Safford.

Using the sale prices for these three properties, and then making dollar adjustments for differences in sale

dates, lot size, view, number of rooms, and gross living area, Mr. Spellman calculated an adjusted sale price for each of the three comparables. Relying on these figures, Mr. Spellman concluded that as of January 1, 2000, the fair cash value of the subject property was \$2,200,000.

Mr. Spellman testified that he did not include in his appraisal the sale of Lot 222, located adjacent to the subject property and relied upon by Ms. Safford. In his opinion, Lot 222, a vacant lot, was not comparable to the subject property as improved and the sale price may not have been an accurate measure of fair cash value because it was sold to an abutter. Mr. Spellman further testified that he did not include in his appraisal Lot 204, also cited by Ms. Safford, because it was waterfront property and, therefore, it was not comparable to the subject property.

On the basis of the evidence presented, the Board found that the appellant failed to meet its burden of proving that the subject property was overvalued for fiscal year 2001. First, Ms. Safford failed to offer any substantiating documentation, such as copies of deeds or property record cards, for the sales and assessment information she proffered and her credibility concerning this data was effectively challenged on cross-examination.

All three of her sales were unreliable: Lot 222 was, unlike the subject, a vacant parcel and although it was sold to an abutter, Ms. Safford gave no consideration to whether the property was exposed to the market or whether the sale price was influenced by circumstances unique to the purchaser; Lot 204 was, unlike the subject, waterfront property whose date of sale as recited by Ms. Safford was called into question by the assessors; and the sale price to which Ms. Safford testified concerning Lot 215 was \$400,000 less than the sale price which the assessors' witness reported.

Further, Ms. Safford failed to establish basic comparability between the subject property and the sale and assessment properties on which she relied. To the extent the properties could be considered comparable, Ms. Safford failed to make adjustments for any differences. Accordingly, the appellant's evidence was not credible and failed to constitute substantial evidence of overvaluation.

On the basis of the evidence presented, the Board found that the appellant failed to meet its burden of proof in this appeal and issued a decision 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).

The assessment is presumed valid until the taxpayer has sustained his burden of proving otherwise. ***Chalkier v. Board of Assessors of Great Barrington***, 356 Mass. 243, 245 (1974). Accordingly, the burden of proof is upon the appellant to make out his right as a matter of law to an abatement of the tax. ***Id.*** The appellant must show that the assessed valuation of his property was improper. See ***Foxboro Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 691 (1982). In appeals before this Board, the appellants "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).

In support of the appellant's contention that the subject property was overvalued for fiscal year 2001,

Ms. Safford cited three sales and four assessments of properties also located on Abel Hill Road. The Board found, however, that the evidence which Ms. Safford offered was not reliable or persuasive. The Board found that the credibility of the sales and assessment data provided by Ms. Safford was effectively impeached by the assessors, both by cross-examination and the affirmative evidence which they presented, and that she failed to offer any deeds, property record cards, or other supporting documentation for the data she presented.

With respect to one of the sales, Lot 222, the Board found that the sale price recited by Ms. Safford, even if it were accurate, did not provide conclusive evidence of fair cash value because it was a sale to an abutter. Ms. Safford failed to consider whether the property had been exposed to the market or whether the price paid for Lot 222 was affected by considerations unique to the purchaser. Accordingly, the sale price of this parcel did not represent reliable evidence of the fair cash value of the subject property. See, e.g., **Cove v. Assessors of Uxbridge**, 1998 Mass. A.T.B. Adv. Sh. 1001, 1008.

The Board is not required to believe the testimony of any particular witness nor to adopt any particular method of valuation that an expert witness may suggest, but can

accept those portions of the evidence which the Board determines have the more convincing weight. **Foxboro Associates**, 385 Mass. at 683; **New Boston Garden Corporation v. Board of Assessors of Boston**, 383 Mass. 456, 473 (1981); **Assessors of Lynnfield New England Oyster House, Inc.**, 362 Mass. 696, 701-702 (19721). "The credibility of witnesses, the weight of evidence, and 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 the basis of the evidence presented, the Board found that the appellant failed to meet its burden of proving that the subject property was overvalued for fiscal year 2001. Accordingly, the Board issued a decision for the appellee in this appeal.

THE APPELLATE TAX BOARD

By: _____
Abigail A. Burns, Chairman

A true copy:

Attest: _____
Clerk of the Board