

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SKYVIEW GROVE ASSOCIATION, v. BOARD OF ASSESSORS OF
INC. THE TOWN OF HINSDALE

Docket No. F287362

Promulgated:
June 27, 2007

This is an appeal filed under the informal procedure,¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate a tax on real estate assessed under G.L. c. 59, §§ 11 and 38, for fiscal year 2005.

Commissioner Mulhern ("Presiding Commissioner") heard the appeal and issued a single-member decision for the appellee in accordance with G.L. c. 58A, § 1A and 831 CMR 1.30.

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

John Timbrell and Dale Prindle, pro se, for the appellant.

Karen Tonelli and Harold Stengel, Assessors, for the appellee.

¹ Within thirty days of service of the appeal, the Town of Hinsdale, in accordance with G.L. c. 58A, § 7A and 831 CMR 1.09, elected to have the appeal heard under the formal procedure.

FINDINGS OF FACT AND REPORT

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

On January 1, 2005, Skyview Grove Association, Inc. ("appellant") was the assessed owner of a parcel of real estate located at 0 Ashmere Road in the Town of Hinsdale ("subject property"). For fiscal year 2006, the Board of Assessors of Hinsdale ("assessors") valued the subject property at \$126,000, and assessed a tax, at the rate of \$11.11 per thousand, in the amount of \$1,399.86, which the appellant paid timely. The appellant timely filed an application for abatement with the assessors, which the assessors denied, and the appellant the seasonably filed its appeal with the Appellate Tax Board ("Board"). Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

The subject property is a vacant parcel of land, consisting of approximately 1.2 acres and featuring approximately 360 feet of frontage on Lake Ashmere. The side of the parcel opposite the lake adjoins Ashmere Road, providing unimpeded access to the subject property. The parcel, a portion of which is wetlands, is naturally graded downward from Ashmere Road toward the lake. The appellant has used the subject property since the 1950s to

provide access to Lake Ashmere for its members, who are owners of property near and on Lake Ashmere.

At the hearing of this appeal, the appellant maintained that the subject property was overvalued, and that its value as of January 1, 2005 was \$15,000, as reflected on appellant's Statement Under Informal Procedure filed with the Board.² To demonstrate that the subject property was overvalued, the appellant focused on the assertion that the property was not buildable and was improperly classified by the Town, because wetlands comprised a large portion of its total area. The primary evidence offered to support this assertion was a copy of a map captioned "Town of Hinsdale, Massachusetts Lake Management Committee - Ashmere Lake Stormwater Remediation - Drainage Improvements Areas 1, 2, and 3." The map, which is dated December 30, 2005, depicts certain wetland areas on the subject property. The appellant, however, offered no expert testimony or other evidence to establish that the amount and location of wetlands rendered the parcel unbuildable. Neither did the appellant offer any direct evidence of the fair cash value of the subject property through either comparable sales or comparable assessments.

² The Appellant's application for abatement indicated an opinion of value of \$1200.

The assessors testified that the subject property was not overvalued, and submitted a summary appraisal report relating to the property as well as an affidavit prepared by the Chairman of the Town's Conservation Commission.³

In his appraisal report, Mr. Haas valued the subject property using the sales-comparison approach. The appraisal examined three sales of land, from which Mr. Haas concluded that the value of the subject property was \$200,000. Mr. Frederick attested to his familiarity with the subject property and stated his belief that the property was, in fact, buildable.

Without regard to the limited probative value of the evidence offered by the assessors, the Presiding Commissioner found that the appellant failed to meet its burden of proving that the subject property was overvalued for fiscal year 2006. In particular, while offering evidence of the presence of wetlands on the subject property, the appellant failed to establish that the property was not buildable. Moreover, and of greatest consequence, the appellant provided virtually no evidence of the value of the subject property as of the relevant assessment date.

³ Neither Norman S. Haas, the licensed real estate appraiser who prepared the appraisal report, nor Edward M. Frederick, who executed the affidavit, appeared at the hearing of this appeal. Absent objection from the appellant, the Presiding Commissioner admitted both documents into evidence. Nonetheless, the Presiding Commissioner recognized that neither of the parties responsible for the creation of the documents was present for cross-examination and, therefore, gave limited weight to the submissions.

Accordingly, the Presiding Commissioner issued a single-member decision for the appellee under G.L. c. 58A, § 1A.

OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. The assessors are required to assess real estate at its fair cash value determined as of the first day of January of each year. G.L. c. 59, §§ 2A and 38. Fair cash value is defined as the price on which a willing seller and a willing buyer in a free and open market 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 appellant has the burden of proving that the subject 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 [B]oard is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prov[e] the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before this 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.**, 393 Mass. at 600 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeal, the Presiding Commissioner found that the appellant failed to present persuasive evidence of overvaluation and did not meet its burden of demonstrating that the subject property had a lower value than its assessed value. First, the appellant's assertion that the subject property was unbuildable was not supported by adequate evidence. More specifically, a "Drainage Improvement Areas" map, without corroboration and competent explanation, did not suffice to establish the extent and impact of wetlands on the subject property. Second, and more importantly, the appellant presented virtually no evidence of the subject property's fair cash value. Taken together, these deficiencies compel the conclusion that the appellant did not meet its burden of proof. Finally, none of the evidence introduced by the assessors provides support for any other conclusion.

Accordingly, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By: _____
Thomas J. Mulhern, Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board