

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

HEIDI HUNTING and JAIME CARO v. BOARD OF ASSESSORS OF  
THE TOWN OF CONCORD

Docket No. F293257

Promulgated: October 6, 2008

This is an appeal 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 appellee to abate taxes on certain real estate located in the Town of Concord owned by and assessed to Heidi Hunting and Jaime Caro ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2007.

Chairman Hammond heard the appeal. Commissioners Scharaffa, Egan, and Mulhern 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.

*Jaime Caro, pro se*, for the appellants.

*Lynn Masson*, assessor, for the appellee.

## FINDINGS OF FACT AND REPORT

On the basis of 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, 2006, the appellants were the assessed owners of a 14.30-acre parcel of real estate located at 39 Bypass Road in the Town of Concord ("subject property").<sup>1</sup> The parcel is improved with a single-family, Colonial-style home built in 1990, which contains 5,582 square feet of finished living area.

For fiscal year 2007, the Board of Assessors of Concord ("assessors") valued the subject property at \$2,081,400 and assessed a tax thereon, at a rate of \$10.56 per thousand, in the amount of \$21,979.58, which the appellants timely paid without incurring interest. On February 1, 2007, the appellants timely filed an Application for Abatement with the assessors. The assessors failed to act on the appellants' application within three months of its filing. Accordingly, the application was deemed denied on May 1, 2007. On July 30, 2007, the appellants seasonably filed their appeal with the

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<sup>1</sup> An additional portion of the appellants' property, 1.6 acres, is located in the Town of Lincoln and is not at issue in this appeal.

Board. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

The subject property is located near the intersection of Route 2 and Route 2A, an area known as Crosby's Corner. The intersection is one of the busiest in the area. There is a Mobil gas station across the street from the subject property and, according to the appellants, the parcel adjoining the subject property is owned by a religious organization that intends to build a large church on the property. There is a shared driveway between the subject property and the parcel owned by the religious organization.

The appellants submitted a document into evidence in which they claimed that the subject property should have been valued between \$1,500,000 and \$1,600,000. The appellants argued that noise associated with heavy traffic and potential development in the area had a substantially negative effect on the value of the subject property, accounting for the disparity between the disputed assessment and the value advocated by the appellants. In support of their conclusion, the appellants referenced several properties located in various areas of Concord, which sold during 2005 at prices ranging from \$1,889,000 to \$2,479,900. The appellants submitted photographs of these

properties, as well as of the subject property, to demonstrate that the properties offered for comparison were in far more desirable locations than the subject property. Thus, the appellants concluded that the properties' sale prices, which were within range of the subject property's fiscal year 2007 assessed value, indicated that the subject property had been substantially overassessed.

As a threshold matter, the photographs submitted by the appellants did little more than provide views of the front of each house, without illustrating the area surrounding each property. Regardless, the appellants failed to provide any basis to quantify the value of the purported locational differences between the cited properties and the subject property. Further, although the appellants submitted some additional information regarding the properties, they made no attempt to account for existing differences between the properties and the subject property beyond claiming that the properties offered for comparison had superior locations. Indeed, in their written submission, the appellants concluded that there were no "true comparables" for the subject property in Concord. Finally, the Board noted that the residence on the subject property is located approximately four hundred feet from the nearest public roadway, a fact that undermines the

appellants' assertion regarding the deleterious effect of traffic noise on the value of the subject property.<sup>2</sup>

Lynn Masson, the town's appraiser, testified on behalf of the assessors and submitted a report supporting the disputed assessment. The report included a detailed description of the subject property as well as a comparable-sales analysis in which the assessors cited three properties in Concord that had sold during 2005. The properties, which are located at 1643 Monument Street, 273 Westford Road, and 57 Macone Farm Lane, are similar to the subject property in building size, style, and quality, and sold at prices ranging from \$1,922,500.00 to \$2,479,000.00. The assessors made adjustments for variations in the residences' size, as well as the number of rooms and bathrooms, to arrive at adjusted sale prices of between \$1,941,600.00 and \$2,519,750.00. The assessors concluded that the cited properties were comparable to the subject property, and that their adjusted sale prices supported the disputed assessment.

To value the land component of the subject property, the assessors employed a "two land line model," which contained an initial land line for the primary site of

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<sup>2</sup> The location of the residence is indicated on a map of the subject property and surrounding parcels submitted into evidence by the assessors.

40,000 square feet and a second land line for so-called "excess land" which comprised the balance of the parcel.<sup>3</sup> For fiscal year 2007, the assessors valued all of the subject property's excess land at Concord's wetlands rate of \$1500.00 per acre, 2.5 percent of the \$60,000.00 per-acre rate normally applicable to excess land. During the abatement process preceding the instant appeal, the assessors learned that approximately 7.8 acres of the subject property's excess land did not qualify as wetlands, and should have been valued at the higher rate, a conclusion the appellants did not dispute. Correcting this error would have increased the subject property's assessment by approximately \$456,000.00.

On the basis of the evidence presented and its subsidiary findings, the Board found that the appellants' contention that the subject property's undesirable location resulted in a fair cash value significantly lower than its assessed value was not supported by credible evidence. The appellants, having concluded that comparable properties did not exist, failed to submit other market data to quantify the impact of traffic or potential development on the market value of the subject property. Rather, the

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<sup>3</sup> The assessors made a five-percent adjustment to the subject property's primary site, amounting to \$16,000.00, to account for "traffic and access issues."

appellants' assertions were based on little more than speculation. Further, the Board found that the assessors' sales-comparison analysis, as well as the valuation error relating to the land component of the subject property, supported the subject property's fiscal year 2007 assessment. Accordingly, the Board found and ruled that appellants had not met their burden of proof and issued a decision in favor of the appellee in this appeal.

#### 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 appellants have the burden of proving that the subject property had 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 sustain 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 this 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)).

Sales of comparable properties, appropriately adjusted to account for differences with the subject property, provide strong indicators of fair cash value. **Foxboro Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 682 (1982).

In the present appeal, the appellants failed to introduce credible affirmative evidence of the subject property's value, relying almost entirely on their own

speculative opinions to support their contentions regarding the extent to which the subject property's location affected its value. Further, the sole error in the assessors' valuation methodology, the mischaracterization of wetlands on the subject property, supported rather than undermined the disputed assessment. Finally, the Board found that the sales-comparison analysis submitted by the assessors supported the assessment. The Board therefore found and ruled that the appellants did not meet their burden of proving that that the assessed value of the subject property for fiscal year 2007 exceeded its fair cash value.

On this basis, the Board decided this appeal for the appellee.

**THE APPELLATE TAX BOARD**

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

**A true copy,**

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