

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**BENJAMIN BIRNIE**

v.

**BOARD OF ASSESSORS OF  
THE TOWN OF STOCKBRIDGE**

Docket No. F298541

Promulgated:  
January 15, 2010

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 real estate tax on certain real estate in the Town of Stockbridge owned by and assessed to Frank Birnie, Trustee of the 1999 Restatement of 1990 Trust Declaration, under G.L. c. 59, §§ 11 and 38, for fiscal year 2008.

Commissioner Mulhern heard this appeal. Chairman Hammond and Commissioners Scharaffa and Rose joined him in a decision for the appellant.

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

*Benjamin Birnie, pro se, for the appellant.*

*Thomas J. Harrington, Esq. and Michael Blay, assessor, for the appellee.*

## FINDINGS OF FACT AND REPORT

On the basis of testimony and exhibits offered at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2007, Frank Birnie, Trustee of the 1999 Restatement of 1990 Trust Declaration ("the trust"), was the assessed owner of a parcel of real estate located at 20 Prospect Hill Road in the Town of Stockbridge ("subject property"). The parcel contains approximately 1.40 acres of land and is improved with a one-story modern/contemporary-style dwelling. The dwelling contains 2,106 square feet of living area, which includes a total of six rooms, including three bedrooms, and also two full bathrooms. The home has central air conditioning and an oil-fired heating system. The subject dwelling also includes a 208-square-foot enclosed porch, a 276-square-foot open porch, a 554-square-foot garage, and a 1,620-square-foot unfinished basement. The exterior of the dwelling is sided with clapboard, and its roof is finished with asphalt shingles. The subject dwelling is in excellent condition.

For fiscal year 2008, the Board of Assessors of Stockbridge ("assessors") valued the subject property at \$825,400 and assessed a tax thereon, at the rate of \$6.92 per

thousand, in the amount of \$5,862.36.<sup>1</sup> On March 8, 2008, Frank Birnie executed a limited power of attorney granting Benjamin Birnie ("appellant"), his son, authority to act on his behalf with respect to the subject property. On March 26, 2008, the Stockbridge Collector of Taxes mailed the second-half fiscal year 2008 tax bills, with a payment due date of May 1, 2008. The tax due was timely paid without incurring interest. On April 7, 2008, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors. The assessors denied the appellant's abatement application on May 27, 2008. The appellant seasonably filed his appeal with the Board on August 11, 2008. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear this appeal.

The appellant argued that the subject property was overvalued for fiscal year 2008 because the assessors based the subject assessment on calendar year 2005 sales, which they also used to arrive at the subject property's fiscal year 2007 assessment. In support of his claim, the appellant offered into evidence the testimony of Michael Blay, assessor for Stockbridge, and also numerous exhibits, including the subject property's property record card listing both the

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<sup>1</sup> This amount includes a \$150.59 assessment under the Community Preservation Act.

fiscal year 2007 and 2008 assessments; the assessors' "Parcel Detail by Style," which identified the sales used by the assessors to determine the fiscal year 2008 assessments; the assessors' land curve schedule; and the property record cards for several properties located in Stockbridge.

Mr. Blay testified that to complete the valuation for fiscal year 2008, the assessors had to analyze sales of properties in the town within a given time period to derive the final assessment values, which were submitted to the Massachusetts Department of Revenue ("DOR") for certification. Mr. Blay further testified that the subject property is categorized as a modern/contemporary-style dwelling and that there were no sales of this style dwelling in calendar year 2006. Therefore, the assessors relied on three sales of modern/contemporary-style properties that sold during calendar year 2005. Mr. Blay further testified that the assessors also used these sales to determine the subject property's fiscal year 2007 assessment of \$744,900, which represented an 8.3% increase above the subject property's fiscal year 2006 assessment. Mr. Blay conceded that there were no significant improvements made to the subject property during calendar year 2006. However, relying on the same 2005 sales used to determine the subject property's fiscal year 2007 assessment, the assessors determined that the subject

property's fiscal year 2008 assessed value had increased by an additional 10.8% percent from fiscal year 2007.

The appellant also argued that the subject property was disproportionately assessed for fiscal year 2008. Specifically, the appellant argued that because the first two acres of a parcel of real estate in Stockbridge were assessed at \$36,000 per acre, with adjustments for condition and influence, and each additional acre was assessed at \$4,500 per acre, the subject property, which includes a relatively small amount of land, was assessed at a much higher per-acre value than other properties in Stockbridge.

In support of his argument, the appellant relied solely on two sales of vacant land which occurred during calendar year 2006. Sale number one, located on Glendale Road, is a 2.86-acre parcel of real estate which sold on March 10, 2006 for \$150,000. For fiscal year 2008, this parcel was assessed at \$155,200. Sale number two is a 15.75-acre parcel of real estate located at 4 Glendale Road, which sold on July 10, 2006 for \$600,000. This property was assessed at \$303,300 for fiscal year 2008. Based on these sales, Mr. Birnie contended that the assessors' underestimated the market value of "excess residual acreage" in Stockbridge and, as a result, the subject property was assessed at a disproportionately higher rate relative to

other properties with acreage far in excess of the subject property. Mr. Birnie did not, however, offer any evidence of the subject property's fair market value nor did he offer any assessment or sales data of comparable properties. The assessors offered no evidence of value but instead rested on their assessment.

Based on the evidence presented and the reasonable inferences drawn therefrom, the Board found that the appellant met his burden of proving that the subject property was overvalued for fiscal year 2008, but failed to prove disproportionate assessment. With respect to the appellant's claim of overvaluation, the Board found that the underlying data and methodology which the assessors employed to value the subject property for fiscal year 2008 was flawed and unreliable. The record revealed no sales of comparable property in calendar year 2006, and no significant improvements to the subject property. Further, there was no evidence concerning market appreciation between the relevant assessment dates for fiscal year 2007 and fiscal year 2008. Accordingly, the Board found that the fair cash value of the subject property for fiscal year 2008 was its fiscal year 2007 assessed value, \$744,900.

With respect to the appellant's claim of disproportionate assessment, the Board found that the

appellant's sole reliance on two sales of vacant land was insufficient to prove that he was the victim of a deliberate scheme of discriminatory, disproportionate assessment.

Accordingly, the Board found that assessors had overvalued the subject property for fiscal year 2008, but had not disproportionately assessed the subject property. The Board, therefore, decided this appeal for the appellant and granted an abatement in the amount of \$573.77.

#### OPINION

The assessors have a statutory and constitutional obligation to assess all real property at its full and fair cash value. Part II, c. 1, § 1, art. 4, of the Constitution of the Commonwealth; art. 10 of the Declaration of Rights; G.L. c. 59, §§ 38, 52. See *Coomey v. Assessors of Sandwich*, 367 Mass. 836, 837 (1975)(citations omitted). Fair cash value means fair market value, which 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 appellant has 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 the taxpayer[] . . . prov[es] the contrary.'" **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984)(quoting **Schlaiker**, 365 Mass. at 245).

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

With respect to "exposing flaws or errors in assessors' method of valuation," taxpayers do not conclusively establish a right to abatement merely by showing that their land, or a portion of it, is overvalued. "The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately." **Assessors of Brookline v. Prudential Insurance Co.**, 310 Mass. 300, 316-17 (1941). In abatement proceedings, "the question is whether the assessment for the parcel of

real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive." **Massachusetts General Hospital v. Belmont**, 238 Mass. 396, 403 (1921). See also **Buckley v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-110, 119; **Jernegan v. Assessors of Duxbury**, Mass. ATB Findings of Fact and Reports 1990-39, 48-49; **Everhart v. Assessors of Dalton**, Mass. ATB Findings of Fact and Reports 1985-49, 54.

In the present appeal, the appellant argued that the underlying data and methodology which the assessors used to assess the subject property for fiscal year 2008 were significantly flawed and unreliable. The appellant maintained that to the extent calendar year 2005 sales reflected an increase in the subject property's fair market value, it was properly accounted for in the appellant's fiscal year 2007 assessment. The Board concurs. The record revealed no sales of comparable property in calendar year 2006, and no significant improvements to the subject property. Further, there was no evidence concerning market appreciation between the relevant assessment dates for fiscal year 2007 and fiscal year 2008. Accordingly, the Board found

that the fair cash value of the subject property for fiscal year 2008 was its fiscal year 2007 assessed value, \$744,900.

The appellant also alleged that the subject property was disproportionately assessed in fiscal year 2008. A taxpayer is entitled to an abatement for disproportionate tax assessment if the taxpayer can prove "an intentional policy or scheme . . . of valuing properties or classes of property at a lower percentage of fair cash value than that percentage in fact applied to the taxpayer's own property." ***Shoppers' World, Inc. v. Assessors of Framingham***, 348 Mass. 366, 377-78 (1965). A taxpayer seeking to establish disproportionate assessment bears the burden of proving that the assessors employed a "deliberate scheme" of disproportionate and discriminatory assessment whereby they "systematically assessed properties or a class of properties at a lower percentage of fair cash value than the percentage applied to the taxpayer's property." ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 727-28 (1982).

If a taxpayer successfully demonstrates improper assessment of such a number of properties to establish an inference that such a scheme exists, the burden of going forward to disprove such a scheme shifts to the assessors. ***Shoppers' World***, 348 Mass. at 377. "The ultimate burden of persuasion, of course, will remain upon the taxpayer."

**First National Stores**, 358 Mass. 554, 562 (1970). Where the taxpayer proves improper assessment of such a number of properties as to justify an inference that a scheme of disproportionate assessments exists, the assessors have the burden of going forward to disprove the existence of such a scheme. **Beardsley v. Assessors of Foxborough**, 369 Mass. 855, 858 (1976). The number of properties and the pattern of assessments to fair cash value must have sufficient statistical validity, however, to warrant the inference. **Id.** at 859 n. 6.

In the present appeal, the appellant relied solely on two sales of vacant land to prove that the subject property was disproportionately assessed. The appellant did not, however, offer any evidence that the assessors engaged in a scheme of disproportionate assessment nor any evidence of comparable assessments indicating that the subject property was assessed at a higher percentage of fair cash value. See **Smith v. Assessors of Marion**, Mass. ATB Findings of Fact and Reports 2005-219, 233 (discussing that a finding of a widespread scheme would require far more data and analysis between classes of property than the minimal assessment information and analysis offered by the appellants). Accordingly, the Board ruled that the appellant failed to

meet his burden of proving that a deliberate scheme of disproportionate assessment existed in this appeal.

Based on all the evidence, the Board found that the subject property was overvalued for fiscal year 2008, but that it was not disproportionately assessed. Accordingly, the Board issued a decision for the appellant and granted an abatement in the amount of \$573.77.

**THE APPELLATE TAX BOARD**

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

A true copy,

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