

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**AMERICO CRAVEIRO, JR. and
JORI ANN CRAVEIRO**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF FREETOWN**

Docket No. F320852

Promulgated:
January 30, 2015

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 Freetown (the "appellee" or the "assessors") to abate taxes on a certain improved parcel of real estate located at 6 Pierce Way East in the Town of Freetown (the "subject property") owned by and assessed to Americo Craveiro, Jr. and Jori Ann Craveiro, (the "appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2013 (the "fiscal year at issue").

Commissioner Rose (the "Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member 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.

Americo Craveiro, Jr. and Jori Ann Craveiro, pro se,
for the appellants.

Shelia Scaduto, chair of the assessors, and Karen Mello,
assistant assessor, for the appellee.

FINDINGS OF FACT AND REPORT

The appellants' case-in-chief consisted of their testimony coupled with the introduction of one exhibit which contained a description of the subject property, a copy of its property record card, a copy of a map of Freetown, copies of the requisite jurisdictional documents, copies of property record cards for two purportedly comparable-assessment properties and four purportedly comparable-sale properties, and a comparable-sales analysis without adjustments. In support of the assessment, the assessors offered the testimony of both the chair of the assessors, Shelia Scaduto, and the assistant assessor, Karen Mello. In addition, the assessors offered into evidence the necessary jurisdictional documents and a report which described and pictorially depicted the subject property, as well as eight purportedly comparable-sale properties. The report also analyzed and compared the purportedly comparable properties' sales prices to the subject property's assessed value. On the basis of this

testimony and these exhibits, the Presiding Commissioner made the following findings of fact.

On January 1, 2012, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of the subject property. For assessment purposes, the subject property is identified as map 248, lot 80. At all relevant times, the subject property was comprised of an approximately 1.62-acre, professionally landscaped parcel which was improved with a 2,962-square-foot, two-story, eight-room, custom Colonial-style home that contained three bedrooms and 3.5 bathrooms, as well as high-quality finishes. The home also had an attached two-car garage and several additional amenities, including central air-conditioning, a fireplace, a patio, a deck, and a mostly unfinished basement, part of which the appellants used as an office for their construction business.

For the fiscal year at issue, the assessors valued the subject property at \$438,100 and assessed a tax thereon, at the residential rate of \$12.76 per thousand for 95% of the subject property's assessed value and at the commercial rate of \$20.57 for 5% of the subject property's assessed value, representing the value of the basement office space, in the amount of \$5,761.23.

Jurisdiction

On or about December 28, 2012, Freetown's Collector of Taxes sent out the town's actual real estate tax notices for fiscal year 2013. In accordance with G.L. c. 59, § 57C, the appellants paid the tax assessed on the subject property without incurring interest. On February 1, 2013, in accordance with G.L. c. 59, § 59, the appellants timely filed an Application for Abatement with the assessors. On April 8, 2013, the assessors denied the appellants' application and on July 2, 2013, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed a Petition Under Formal Procedure with the Appellate Tax Board (the "Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

Merits

The appellants primarily argued that the assessors should not have increased the subject property's assessment from its prior year's assessment of \$412,000 to its fiscal year 2013 assessment of \$438,100 because the assessed values of two "similar" properties in Freetown had decreased from fiscal years 2012 to 2013 and the sale prices of four purportedly comparable properties located in Freetown were lower than the subject property's assessment.

With respect to the assessed values of the two purportedly similar properties, one located at 9 Jethol Drive and the other at 3 Christopher Street, the property record cards confirm that their assessments had decreased from fiscal year 2012 to fiscal year 2013 from \$356,900 to \$354,300 and from \$376,700 to \$371,100, respectively. The appellants, however, did not submit into evidence any analysis demonstrating that property values had decreased overall in Freetown or in the subject property's neighborhood from fiscal years 2012 to 2013. Moreover, the appellants did not offer any consequential analysis comparing the characteristics of these two properties to the features of the subject property or propose any adjustments to account for these two properties' obvious differences with the subject property. Furthermore, the Presiding Commissioner observed that the one- to two-percent drop in these two properties' assessed values could have been attributable to any number of reasons having no relationship to the assessed value of the subject property. The appellants did not address this point.

With respect to the four purportedly comparable-sale properties, the following table summarizes most of the information provided by the appellants.

<u>Address</u>	<u>Subject Property</u>	<u>24 Locust St</u>	<u>7 Pierce Way East</u>	<u>18 Billy's Ln</u>	<u>19 Dunham Rd</u>
Distance (mile)		5.48	0.01	0.32	6.84
Parcel Size (acre)	1.62	4.74	0.93	0.95	1.61
Living Area (SF)	2,962	2,932	2,720	2,508	4,424
Year Built	1994	1997	1984	1987	1985
Rooms	8	8	7	8	9
Bedrooms/Baths	3/3.5	3/3	3/2.5	3/2.5	4/3.5
Air Conditioning	central	central			central
Other Features		pool pool house 4-bay garage	4-season room	sunporch	pool sunroom
Sale Date (2011)		10/06	03/30	12/08	05/05
Sale Price (\$)		420,000	355,000	345,000	405,000

In addition to supplying this information, the appellants made computations of these properties' sale price per square foot of living area to produce units of comparison with the subject property's assessed value per square foot of living area. The Presiding Commissioner's calculations, however, based on the same data, were substantially different from the appellants'. A comparison between the appellants' computations and the Presiding Commissioner's calculations is contained in the following table.

<u>Calculations</u>	<u>Subject Property</u>	<u>24 Locust St</u>	<u>7 Pierce Way East</u>	<u>18 Billy's Ln</u>	<u>19 Dunham Rd</u>
Appellants'	\$115	\$101	\$98	\$115	\$92
Presiding Commissioner's	\$148	\$143	\$131	\$138	\$92

Once again, the appellants failed to provide any adjustments to account for obvious differences between the characteristics of their purportedly comparable-sale properties and those of the subject property.

Consequently, the appellants' computations, even as corrected by the Presiding Commissioner's calculations which were based on the appellants' unadjusted data, failed to generate credible units of comparison.

In support of the assessment, the assessors testified that the appellants had also sought abatement for the prior fiscal year's assessment. As part of that abatement process, the assessors inspected the subject property and discovered several inaccuracies on the subject property's property record card. The corrections resulted in an increase in the subject property's assessment for fiscal year 2013, the fiscal year at issue in this appeal.

The assessors also performed a comparable-sales analysis that included sales from 2009 to 2013 of eight purportedly comparable properties in Freetown. The assessors adjusted these sales for differences between these properties' features and those of the subject property. The assessors' analysis produced an indicated value range for the subject property of \$444,000 to \$538,330.

In consideration of all of the evidence, the Presiding Commissioner found that the appellants failed to demonstrate that the subject property was overvalued for the fiscal year at issue. In particular, the Presiding

Commissioner found that the appellants did not sufficiently demonstrate that the purportedly comparable properties upon which they relied in their assessment "analysis" and in their comparable-sales analysis were sufficiently similar to the subject property. The Presiding Commissioner further found that the appellants' analyses did not include any adjustments to account for obvious differences between the subject property's features and those of the purportedly comparable properties, which rendered the appellants' units of comparison, even as corrected by the Presiding Commissioner, essentially meaningless. Moreover, the appellants failed to adequately substantiate their allegation that real estate property values had decreased overall in Freetown and in the subject property's neighborhood from fiscal years 2012 to 2013.

In addition, the Presiding Commissioner credited the assessors' explanation for increasing the subject properties' assessment after their inspection because they credibly showed that the inspection revealed discrepancies on the subject property's property record card, which, once corrected, increased the value of the subject property. The Presiding Commissioner also credited the assessors' comparable-sales analysis, which created a reasonable range of values indicative of the subject properties' value for

fiscal year 2013. The Presiding Commissioner found that the assessors' analysis included sufficient adjustments accounting for differences between the features of the comparable properties and those of the subject property and that the subject property's assessed value fell well within that range. Furthermore, the Presiding Commissioner was able to verify much of the assessors' analysis because it contained a considerable amount of supporting documentation.

On this basis, the Presiding Commissioner found that the appellants failed to meet their burden of establishing that the subject property was overvalued for the fiscal year at issue and, therefore, decided this appeal for the appellee.

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 preceding the start of the fiscal 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 burden of proof is upon the taxpayers to make out their right as a matter of law to abatement of the tax. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). The taxpayers must show that the assessed valuation of the subject property was improper. See **Foxboro Associates v. Assessors of Foxborough**, 385 Mass. 679, 691 (1982). The assessment is presumed valid until the taxpayers sustain their burden of proving otherwise. **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. 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 tried to show that the assessed value of the subject property exceeded its fair cash value by introducing analyses of purportedly comparable-assessment and comparable-sale properties and by

suggesting that property values in the town had decreased from the prior fiscal year.

With respect to the appellants' affirmative evidence of value, the Presiding Commissioner found that while an analysis of comparable properties' assessments may form the basis for an abatement, see G.L. c. 58A, § 12B¹ and **John Alden Sands v. Assessors of Bourne**, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-1107 ("The introduction of such evidence may provide adequate support for either the granting or denial of an abatement."), the appellants did not demonstrate that the purportedly comparable properties upon which the appellants' comparable-assessment analysis relied were sufficiently comparable to the subject property. The Presiding Commissioner further found that the appellants did not show that the purportedly comparable properties used in their comparable-sales analysis were comparable, either. Even a cursory review of the properties' characteristics placed their comparability to the subject property in issue. See, e.g., **Hinds v. Assessors of Manchester-By-The-Sea**, Mass. ATB Findings of Fact and Reports 2006-771, 780 ("[T]he appellants'

¹ General Laws chapter 58A, § 12B provides that: "At any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible."

purportedly comparable properties were differently situated and so otherwise [dissimilar from] the appellants' property that their comparability was dubious.") (citing **Narkiewich v. Assessors of Newbury**, Mass. ATB Findings of Fact and Reports 2006-354, 360-61).

Moreover, the Presiding Commissioner found that the appellants' analyses did not include any adjustments to account for differences between the subject property compared to the purportedly comparable properties. While arms-length "sales of property usually furnish strong evidence of market value," **Foxboro Associates**, 385 Mass. at 682, allowances must be made for various factors which would otherwise cause disparities in the comparable property's sale prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082. In addition, "reliance on unadjusted assessments of assertedly comparable properties . . . [is] insufficient to justify a value lower than that" assessed. **Antonio v. Assessors of Shutesbury**, Mass. ATB Findings of Fact and Reports 2008-54, 70. Accordingly, the Presiding Commissioner found and ruled that, without the appropriate adjustments, or an explanation as to why adjustments were not necessary, the appellants' reliance on the assessed values and sale prices of other properties in

Freetown was not a persuasive indicator of the subject property's fair cash value. The Presiding Commissioner also found and ruled that appellants' failure to apply adjustments rendered their units of comparison, even as corrected by the Presiding Commissioner, nearly meaningless. "Adjustments for differences in the elements of comparison are made to the price of each comparable property The magnitude of the adjustment made for each element of comparison depends on how much that characteristic of the comparable property differs from the subject property." THE APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 322 (13th ed. 2008).

The Presiding Commissioner further found and ruled that the appellants failed to introduce competent and sufficient evidence demonstrating that real estate values in the town had decreased from the prior fiscal year. Finally, the Presiding Commissioner found and ruled that the assessors' evidence, which credibly explained the increase in the subject property's assessment from the previous fiscal year and created a reasonable range of values indicative of the subject property's value, supported the assessment.

On these bases, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue and, therefore, decided this appeal for the appellee.

THE APPELLATE TAX BOARD

By: _____
James D. Rose, Commissioner

A true copy,

Attest: _____
Clerk of the Board