**COMMONWEALTH OF MASSACHUSETTS**

**APPELLATE TAX BOARD**

| | | |
|---|---|---|
| **DAVID E. WICKLES, SR. & LENORA F. WICKLES** | **v.** | **BOARD OF ASSESSORS OF THE TOWN OF HATFIELD** |
| Docket No. F312519 | | Promulgated: March 13, 2013 |

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 Board of Assessors of the Town of Hatfield ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Hatfield owned by and assessed to David E. Wickles, Sr. and Lenora F. Wickles ("appellants") under G.L. c. 59, § 11 and 38, for fiscal year 2011 ("fiscal year at issue").

Commissioner Mulhern heard the appeal. Chairman Hammond and Commissioners Scharaffa, Rose, and Chmielinski joined him in the corrected decision for the appellants.

These findings of fact and report, promulgated simultaneously with the corrected decision, are made pursuant to the appellants' request under G.L. c. 58A, § 13 and 831 CMR 1.32.

*David E. Wickles, Sr. and Lenora F. Wickles, pro se*, for the appellants.

*David J. Martel,* Esq. 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, 2010, the valuation and assessment date for the fiscal year at issue in this appeal, the appellants were the assessed owners of a parcel of real estate located at 157 Prospect Street in the Town of Hatfield ("subject property"). The parcel is improved with a wood-framed, split-level style house that was built in 1974. The main living level of the dwelling contains a finished living area of 3,498 square feet and a total of eight rooms, including four bedrooms as well as two full bathrooms and one half bathroom. The lower level is finished with a large "great room" with fireplace and built-in entertainment center, a game room, a den, a bathroom, and a utility room. Interior finishes include drywall and ceramic tile and hardwood floors. The exterior of the dwelling is vinyl siding, and it has an asphalt-shingled roof. The dwelling is heated by a forced-hot-water heating system which is fueled by oil, and there is also a central air-conditioning system. Additional features of the dwelling include an open porch and a three-car attached garage.

Also located on the subject property are three other garage-type structures. First, is a 5,670-square-foot,

prefabricated, “Morton building” that is used to store Mr. Wickles’ automobile collection. The structure is heated, has good lighting and is well maintained. Second, is a 3,600-square-foot “Tobacco barn” that was originally built in the 1940s and now has ribbed metal panels bolted to the roof and walls. This structure is used to store the appellants’ lawn and garden equipment and recreational vehicles, and is in average or typical condition.

Finally, located at the rear of the subject property is a 4,860-square-foot, high-bay prefabricated Morton building used for the appellants’ trucking business, Dave Wickles Truck Leasing. The appellants’ business provides roll-off dumpsters to various sites and then transports and empties the dumpsters at landfills. The appellants also use a portion of the subject dwelling, including two bedrooms and a half bathroom, as a home office for their trucking business.

The subject property is situated in a rural residential area. However, the appellants have been granted a special permit for the storage and repair of vehicles and equipment used in their trucking business. Therefore, the subject property is a non-conforming legal use.

For the fiscal year at issue, the assessors valued the subject property at $851,400 and assessed a tax thereon, at the

rate of $10.84, in the total amount of $9,473.54.[1] On January 20, 2011, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors. The appellants' abatement application was denied by the assessors on March 30, 2011.

On April 4, 2011, the assessors committed to the Collector of Taxes for Hatfield a warrant for the collection of a revised assessment against the appellants of an additional tax of $1,208.66 on an additional value of $111,500. On the same day, the assessors sent a letter to the appellants explaining that as part of the abatement process, a "comprehensive inspection" of the subject property was completed at the assessors' request by Patriot Properties. As a result of the inspection, the assessors determined that the subject property was mixed-use (residential/commercial) as opposed to primarily residential. Also, the assessors updated their records, removing items that no longer existed, and "revised where needed, grades and conditions."

Subsequently, the assessors issued a revised tax bill, pursuant to G.L. c. 59, § 76, increasing the total taxable valuation of the subject property to $962,900 and assessed a revised tax of $10,474.10[2] for the fiscal year at issue. The

[1] The tax assessed includes a Community Preservation Act ("CPA") surcharge of three percent.
[2] This amount includes the additional CPA surcharge.

appellants timely paid the tax due without incurring interest and, on June 14, 2011, the appellants seasonably filed an appeal with the Board. On the basis of these facts, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

In support of their claim that the subject property was overvalued for the fiscal year at issue, the appellants submitted a self-prepared report, including a written statement, a description and map of the subject property, and the subject property's initial and revised property record cards. The appellants also included the property record cards for six Morton buildings located in Hatfield that were built during the period of 1987 to 2004. These buildings varied in size from 1,800 square feet to 6,000 square feet with assessed values that ranged from $15,400 to $109,500, with an average assessed value of $41,150, or $13.09 per square foot. In contrast, the Morton buildings located on the subject property were valued at $112,100 and $118,200, or $20.85 and $23.07 per square foot, respectively.

Additionally, the appellants submitted the property record cards for eight Tobacco barns that were constructed between 1910 and 1940. These building varied in size from 600 square feet to 4,200 square feet with assessed values that ranged from $4,800 to $12,000 with an average assessed value of $8,225, or $4.00

per square foot; in contrast, the subject property's Tobacco barn was valued at $54,200, or $15.05 per square foot. Finally, the appellants included in their report a copy of the original fiscal year 2011 property record card with notations and recommendations garnered from Patriot Properties' March 2011 inspection of the subject property ("notated property record card"), which reflects the removal of certain items that no longer existed, including a pool, a shed, and a whirlpool. The notated property record card also includes a suggested decrease in value for the subject property's Tobacco Barn and Morton buildings.

The assessors presented their case-in-chief through the testimony of the assessor, Christopher Smith, and the introduction of several exhibits, including the requisite jurisdictional documentation and the subject property's initial and revised property record cards.[3] The assessors offered no evidence regarding the submission of a statement to the Commissioner listing the additional amounts assessed pursuant to G.L. c. 59, § 76.

On the basis of all the evidence, the Board found that the assessors failed to return to the Commissioner a statement

[3] Subsequent to Patriot Properties' inspection of the subject property, the assessors issued separate property record cards for the commercial and residential portions of the subject property. The property record card for the commercial portion indicated that the Morton building and the home-office were valued using the income-capitalization approach.

showing the amount of additional taxes assessed by means of the revised assessment, as required by G.L. c. 59, §§ 75 and 76. For the reasons stated in the following Opinion, the Board found that this requirement was a condition precedent to the validity of a revised assessment. Therefore, the Board found and ruled that the assessors' failure to meet this requirement rendered the revised assessment invalid.[4] Further, relying on the decreased value recommendations shown on the notated property record card and also the appellants' Tobacco barn and Morton building comparable assessment data, the Board found and ruled that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue. After taking into consideration all of the evidence, the Board concluded that the fair cash value for the subject property for the fiscal year at issue was $729,500.

Accordingly, the Board issued a decision for the appellants and granted an abatement in the amount of $2,361.61, including the CPA surcharge.

[4] Because the Board found that the assessors failed to comply with the filing requirement of §§ 75 and 76, the Board made no findings or rulings as to whether the original assessment resulted from the assessors "unintentionally" valuing and classifying the subject property in an "incorrect manner" due to the reasons provided in §§ 75 and 76.

## OPINION

**Revised Assessment**

G. L. c. 59, § 76 provides that,

> [i]f any property subject to taxation has been unintentionally valued or classified in an incorrect manner due to clerical or data processing error or other good faith reason, the assessors shall revise its valuation or classification and shall assess any additional taxes resulting from such revision ***in the manner and within the time provided by section seventy-five and subject to its provisions.*** (Emphasis added.)

Revised assessments are not a part of the normal process of taxation but rather, they are a special right conferred by the Legislature to allow the assessors to make corrections in certain circumstances. *See* ***United Orthodox Services, Inc. v. Assessors of Brookline,*** Mass. ATB Findings of Fact and Reports 2004-515, 522. "'Therefore, taxing authorities must adhere to the specific requirements of the statutes granting the right to make these additional assessments.'" ***Id.*** (quoting ***Sithe New Boston LLC & Boston Edison Co. v. Boston***, Mass. ATB Findings of Fact and Reports 2001-931, 938-39). Accordingly, for the assessors to validly proceed with the revised assessment, it is "incumbent upon them to strictly adhere to the statutory requirements of § 75." ***Id.*** at 523.

One of the statutory requirements under § 75, also applicable to revised assessments under § 76, is that the assessors must "not later than June thirtieth of the taxable year . . . return to the commissioner a statement showing the amounts of additional taxes so assessed." In ***United Orthodox,*** *supra,* the Board ruled that the statutory language of § 75 is "clear and unambiguous" regarding the requirement that the taxing authority submit a statement to the Commissioner. ***United Orthodox,*** Mass. ATB Findings of Fact and Reports at 2004-530-31 (citing ***Sithe,*** *supra).* The Department of Revenue's Property Tax Bureau released Informational Guideline Release No. 90-215, makes clear that this submission is not perfunctory but is meant to "ensure that the additional amount assessed is not excessive." ***Id.*** at 531. Failure to comply with this statutory requirement renders a revised assessment invalid. ***Id.***

In the present appeal, the Board found that the assessors failed to file the required statement with the Commissioner prior to the June 30, 2010 deadline. Accordingly, the assessors failed to comply with the procedural requirement of § 75 and, the Board therefore found and ruled that the revised assessment was invalid.

**Overvaluation**

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 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 fair market value than the value 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 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, 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)).

In the present appeal, the appellants submitted a notated property record card that was prepared on behalf of the assessors in connection with the appellants' abatement application process, which showed suggested valuation decreases in the subject property's Tobacco barn and Morton buildings. The appellants also offered the property record cards of several properties that were improved with Tobacco barns and Morton buildings. The evidence showed that the Tobacco barns were assessed, on average, at $4.00 per square foot compared to the subject property's Tobacco barn that was assessed at $15.05 per square foot. Further, the property record cards showed that the Morton buildings were assessed at $13.09 per square foot compared to the subject property's Morton buildings that were assessed at $20.85 and $23.07 per square foot.

The Board need not specify the exact manner in which it arrived at its valuation. ***Jordan Marsh v. Assessors of Malden,*** 359 Mass. 196, 110 (1971). The fair cash value of property cannot be proven with "mathematical certainty and must ultimately rest in the realm of opinion, estimate and judgment." ***Assessors of Quincy v. Boston Consol. Gas Co.,*** 309 Mass. 60, 72 (1941). "The credibility of witnesses, the weight of evidence, and inferences to be drawn from the evidence are matters for the [B]oard." ***Cummington School of the Arts, Inc. v. Assessors of Cummington,*** 373 Mass. 597, 605 (1977).

On the basis of all the evidence of record, the Board found and ruled that the appellants met their burden of proving a fair market value lower than both the initial and revised assessed values for the fiscal year at issue. After considering the evidence and relying primarily on the notated property record card and the appellants' comparable assessment data, the Board found that the subject property's fair market value was $729,500 for the fiscal year at issue and the subject property was, therefore, overvalued.

Accordingly, the Board decided this appeal for the appellants and granted an abatement in the amount of $2,361.61.

**THE APPELLATE TAX BOARD**

**By:** _____
**Thomas W. Hammond, Jr., Chairman**

**A true copy,**

**Attest:** _____
**Clerk of the Board**