

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PETER M. ROSS, JR. &  
DIANNE S. ROSS

v. BOARD OF ASSESSORS OF  
THE TOWN OF IPSWICH

Docket No. F234508

Promulgated:  
November 21, 2000

This is an appeal under the formal procedure, pursuant to G.L. c. 59, §§64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the Town of Ipswich, owned by and assessed to the appellant under G.L. c. 59, §38, for fiscal year 1996.

Former Commissioner Lomans heard this appeal and was joined in the decision for the Appellee by former Chairman Gurge and Commissioners Scharaffa, Burns and Gorton.

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

*Arthur K. Ross, Esq.,* for the appellants.

*Frank J. Ragonese,* Assessor, for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on the testimony and exhibits entered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

At all times material to this appeal, Peter M. and Dianne S. Ross ("appellants") were the owners of a parcel of 10.79 acres of land ("property"), located on Dark Swamp Road in Ipswich, Massachusetts.

On October 27, 1992, the Town of Ipswich Building Inspector issued a building permit to the appellants, allowing the appellants to construct a single family home on the property. Shortly thereafter, the appellants began construction pursuant to the building permit. On January 25, 1993, pursuant to an appeal of the building permit brought by neighbors of the appellants, the Ipswich Zoning Board of Appeals found that the appellants' property lacked adequate frontage and, therefore, was not a buildable lot. Although the appellants' property did have frontage on Dark Swamp Road, a private way, Dark Swamp Road was unimproved and swampy, overgrown with brush, and was nearly impassable, except by foot, motorcycle and four-wheel drive vehicle. Pursuant to its ruling, the Zoning Board of Appeals ordered the Building Inspector to issue a "stop order" on the construction of the dwelling.

Subsequently, on March 2, 1993, the Massachusetts Land Court issued a preliminary injunction vacating the Building Inspector's stop order, and enjoined the Building Inspector from interfering with further construction, with the caveat that the appellants' continued construction was at their own risk. Construction of the appellants' single family home was subsequently completed. On August 3, 1994, the Land Court issued a temporary order to the Building Inspector ordering him to issue a temporary occupancy permit to the appellants, thereby allowing them to live in the newly-constructed house pending a trial on the merits in Land Court.

On November 8, 1994, the Land Court upheld the Zoning Board of Appeals' decision and ruled that because the appellants' parcel had insufficient frontage, it was not buildable. The Land Court noted that the appellants could, assuming they had the right, improve Dark Swamp Road in order to create adequate access to their property. Accordingly, the Land Court extended the appellants a temporary occupancy permit for six months to give them time to improve Dark Swamp Road thereby creating sufficient access to their parcel and satisfying the relevant frontage requirement.

In a document dated March 9, 1995, the Ipswich Planning Board determined that, so long as the appellants executed their planned improvements of Dark Swamp Road in a manner which met with the specifications imposed by the Planning Board, "the Ipswich Planning Board will issue a finding that the Dark Swamp Road provides adequate access to the Ross Lot."

As of January 1, 1995, the valuation date at issue in this appeal, the appellants' property consisted of the above-described land, improved by a two-story single-family home with 2,720 square feet of living space, two baths, and four bedrooms. For fiscal year 1996, the Assessors valued the subject property in the amount of \$276,900: \$115,600 for the 10.8 acres of land, and \$161,300 for the single family home. The appellants timely paid the tax assessed, \$3,835.07, without incurring interest. On December 15, 1995, the appellants timely filed an application for abatement with the Assessors, which they denied by notice dated February 26, 1996. The appellants timely appealed the Assessors' denial with this Board on May 21, 1996. On the basis of the foregoing, the Board found that it had jurisdiction over this appeal.

The appellants' chief contention is that the Assessors' valuation of their property was excessive

because zoning restrictions prohibited residential development of the property. In appellants' view, the property must be valued as a vacant parcel, in their opinion \$52,400, plus the "fair rental value" of a four bedroom house in Ipswich, which they determine to be \$1,200 per month or \$14,400 for a year. Under this theory, the fair cash value of the property for fiscal year 1996 is the sum of the vacant parcel value and the fair rental value or \$66,800.

In defense of their assessment, the Assessors submitted evidence of three sales of comparable properties in the Town of Ipswich. The sales took place from one month to less than three months prior to the January 1, 1995 valuation date. Based on these sales, and considering their lot sizes, building styles, living area, prevailing conditions of the buildings and other such characteristics, the Assessors concluded that the fair cash value of the subject property was \$276,900.00. Further, they maintained that the land value and overall assessment of the subject property was consistent with the neighborhood and therefore reflected fair market value.

On the basis of the foregoing, the Board found that the appellants failed to prove that their property was assessed at more than its fair cash value. A willing buyer

on January 1, 1995 would have been aware of the Land Court's decision upholding the Zoning Board but the buyer would also be aware that, as the Land Court made clear, he or she could solve the frontage problem by improving Dark Swamp Road. The appellants failed to offer any evidence of what the costs to improve Dark Swamp Road were or otherwise quantify the diminution in value resulting from the uncertainty concerning the lack of frontage issue as it existed on January 1, 1995. Rather, their valuation approach was pure conjecture and made no attempt to determine what the price which a willing buyer and seller would agree to given the frontage issue. Accordingly, the Board found that the appellants failed to carry their burden of proof and, accordingly, issued a decision for the appellee in this appeal.

#### OPINION

The Assessors are required to assess real estate at its "fair cash value." G.L. c. 59, §39. Fair cash value for taxation purposes, is "the 'fair market value,' which is the price an owner willing but not under compulsion to sell ought to receive from one willing but not under compulsion to buy." ***Taunton Redevelopment Associates v. Board of Assessors of Taunton***, 393 Mass. 293, 295 (1984),

quoting ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956). "A proper valuation depends on consideration of the myriad facts that should influence a seller and buyer in reaching a fair price." ***Montaup Electric Co. v. Board of Assessors of Whitman***, 390 Mass. 847, 849-50 (1984).

The assessment on a parcel of real estate's value is presumed valid until the taxpayers sustain their burden of proving otherwise. ***Schlaiker v. Board of Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). Accordingly, the burden of proof is on the appellants to make out their right as a matter of law to an abatement of the tax. ***Id.*** "The board is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . prove the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984), quoting from ***Schlaiker v. Assessors of Great Barrington, supra.***

The appellants, therefore, must demonstrate that the assessed valuation of their property was invalid. See ***Foxboro Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 691 (1982). 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. v. Assessors of Lynn**, 393 Mass. 591, 600, quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855.

In the present appeal, the appellants argued that the zoning restriction diminished the fair cash value of the property. However, they offered no expert testimony or reasoned analysis regarding how the value was affected. They merely asserted that the restriction existed as of the valuation date and therefore the parcel should be valued as if vacant with an additional amount reflecting the rental value of the property.

The mere existence of a restriction does not entitle the appellants to an abatement. They must establish how that restriction affected the fair cash value of their property. See, e.g., **Reliable Electronic Finishing Co. v. Assessors of Canton**, 410 Mass. 381, 382 (1991); **Parkinson v. Assessors of Medfield**, 398 Mass. 112 (1986). In order to establish the effect of the restriction, the appellants must show how the restriction "would affect the value of the property to a potential buyer." **Reliable Electronic Finishing**, 410 Mass. at 382. The appellants' evidence and valuation analysis did not address this critical issue.

Accordingly, the Board ruled that the appellants failed to meet their burden of proof in this appeal and issued a decision for the appellee.

APPELLATE TAX BOARD

By: \_\_\_\_\_  
Abigail A. Burns, Chairman

A true copy,

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