

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

FAMIGLIA, LLC

v. BOARD OF ASSESSORS OF  
THE TOWN OF LONGMEADOW

Docket Nos. F282004, F286551

Promulgated:  
October 28, 2008

These are appeals 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, Board of Assessors of the Town of Longmeadow ("assessors" or "appellee"), to abate taxes on real estate located in the Town of Longmeadow owned by and assessed to the appellant, Famiglia, LLC, a Delaware limited liability company ("Famiglia" or "appellant"), under G.L. c. 59, §§ 11 and 38, for fiscal years 2005 and 2006 ("fiscal years at issue").

Commissioner Rose heard these appeals. Chairman Hammond and Commissioners Scharaffa, Egan and Mulhern joined him in the decision for the appellee for fiscal year 2005 and in the decision for the appellant for fiscal year 2006.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 8.31 CMR 1.32.

*Lauren J. Elliot, Esq.* for the appellant.

*David J. Martel, Esq.,* for the appellee.

#### **FINDINGS OF FACT AND REPORT**

On January 1, 2004 and January 1, 2005, the relevant assessment dates, the appellant was the assessed owner of a parcel of land in the Town of Longmeadow ("Longmeadow") identified on the assessor's property record card as parcel 234/3/35A ("subject property"). The subject property is located at 170 Dwight Road in Longmeadow and contains a land area of 10.74 acres.<sup>1</sup> It is improved with a one-story, pre-engineered metal structure containing approximately 78,200 square feet of gross rentable area, of which 56,000 square feet is finished space and 22,200 square feet remains unfinished.

The subject property is leased by the appellant to Grande Meadows Racquet Club, Inc. ("Grande Meadows Racquet Club"), a charitable corporation organized pursuant to G.L. c. 180. The structure is operated as a tennis club consisting of eight tennis courts plus amenities ("tennis

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<sup>1</sup> During the hearing, the assessors asserted that the land area of the subject property was 11.98 acres. Famiglia owns three contiguous parcels of land identified as: Parcel A, containing 10.74 acres; Parcel B, containing 1.24 acres; and Parcel C, containing 0.73 acres. Pursuant to testimony, exhibits and the appraisal report of the appellant's expert, the Board found that the subject property, which is Parcel A and is identified on the assessors' property record card as parcel 234/3/35A, contains 10.74 acres.

facility"). The subject property is zoned Residence A-2, but the present use is allowed by a Special Use Permit.

For fiscal year 2005, the assessors valued the subject property at \$2,332,400 and assessed a tax thereon at the rate of \$17.12 per thousand, in the amount of \$39,930.69. The appellant paid the tax without incurring interest. The appellant timely filed its abatement application with the assessors on January 31, 2005. The assessors denied the appellant's abatement application on May 2, 2005.<sup>2</sup> On July 28, 2005, the appellant seasonably appealed to the Appellate Tax Board ("Board"). On this basis, the Board found that it had jurisdiction over the fiscal year 2005 appeal.

For fiscal year 2006, the assessors valued the subject property at \$2,673,500 and assessed a tax thereon, at the rate of \$15.26 per thousand, in the amount of \$40,797.61. The appellant paid the tax timely without incurring interest. The appellant filed its abatement application with the assessors on February 1, 2006. The assessors denied the abatement application on April 19, 2006. On

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<sup>2</sup>According to G.L. c. 58A, § 6 and G.L. c. 59, § 64, the assessors have three months from the date of filing in which to act upon an abatement application. The three-month period expired on April 30, 2005. However, in 2005, April 30<sup>th</sup> fell on a Saturday. When a date for a required action falls on a Saturday, Sunday, or legal holiday, the date for action is extended by operation of law to the following business day. G.L. c. 4, § 9. Accordingly, the assessors had until May 2, 2005 to act on the appellant's abatement application.

July 17, 2006, the appellant seasonably appealed to the Board. On this basis, the Board found that it had jurisdiction over the fiscal year 2006 appeal.

The subject property consists of 468,229 square feet of land, or approximately 10.74 acres. There is 293.9 feet of frontage and a single curb cut on Dwight Road, and an additional 238 feet along Converse Street that is not used for access. The improved portion of the subject parcel is cleared, generally level, and at or near road grade. The remainder of the subject property is wooded with a stream running along the northern portion of the property.

The main improvement on the subject property is a one-story metal structure used as the tennis facility. There is a small one-story masonry section attached to the front of the building that is the entry to the tennis facility.

In calendar year 2001, a fire caused severe damage to the tennis facility. The steel structure survived the fire and the tennis facility was rebuilt in 2003. The rebuilt tennis facility contains 78,200 square feet of ground floor space, 960 square feet of mezzanine area and 3,600 square feet of basement area. As of the relevant assessment dates, approximately 56,000 square feet was renovated and was in use; the remaining approximately 22,200 square feet, the "shell area," remained unfinished.

The tennis facility contains eight tennis courts on an asphalt and concrete base. There is a small finished area with an office, lounge, storage closet, and men's and women's locker rooms, showers and lavatories. The walls are corrugated metal panels with insulation. The ceilings are also corrugated metal with insulation. Heating is provided by six natural gas heaters in the finished area of the tennis facility with each wall having three exhaust fans, and electricity is provided by a 120/240/40 volt three-phase electric service through three circuit breakers. There is also central air conditioning in the finished area and a sprinkler system. There are heat and flame detectors throughout the tennis facility. The subject property is also improved with an estimated 90,000-square-foot parking lot for the tennis facility. The parking lot has asphalt paving with six light poles, housing two flood lamps each. There is minimal landscaping surrounding the tennis facility.

The subject property is sited in a Residence A-2 Zone and currently operates under a Special Use Permit which allows for the operation of a G.L. c. 180 not-for-profit tennis facility.

The appellant presented its case in chief through the testimony of two witnesses. First, Mr. Leo Shapiro, the

sole shareholder of Famiglia (along with his wife, Susan Shapiro) and the president of the Grande Meadows Racquet Club, described the tennis facility and the leasing arrangement between Famiglia and Grande Meadows Racquet Club. Mr. Shapiro explained that Famiglia acquired the subject property from his wife, Mrs. Shapiro, in July of 2003. Before that time, a lease existed between Mrs. Shapiro and the Grande Meadows Racquet Club. Mrs. Shapiro assigned her interest in the lease to Famiglia at the time of sale. Mr. Shapiro also testified that the subject property can only be used as a not-for-profit tennis club because of its Special Use Permit. He explained that if the tennis facility were to cease operation, the subject property would be limited to the uses allowed by the original A-2 zoning.

Mr. Shapiro also testified that the tennis club has never been able to pay the actual lease rent, and that Famiglia has in fact loaned money to Grande Meadows Racquet Club to pay its mortgage, which the lease rent was supposed to cover. It was his testimony that business had suffered because the tennis facility's former tennis professional had opened a new club in Enfield, Connecticut and took half of the tennis facility's members with him to the new club. In addition, he testified that there is also competition

from a tennis facility in nearby Ludlow, Massachusetts. He testified that since the tennis facility was rebuilt, it has lost money each year and Famiglia has had to support it.

The second witness for the appellant was Harvey Cohen, the appellant's real estate appraiser. On the basis of his education and experience, the Board qualified Mr. Cohen as an expert in the area of real estate valuation. It was Mr. Cohen's opinion that the highest and best use of the subject property was its current use as a tennis club. He considered all three approaches to value -- the cost, sales and income-capitalization approaches. Mr. Cohen rejected the cost approach, because there were few land sales in the immediate area available to support a land value for the subject property, and he believed that the varying age and condition of the subject building compromised an accurate depreciation calculation. He also rejected the sales approach, because he was unable to find any sales of tennis facilities in the area. Therefore, Mr. Cohen relied on the income-capitalization approach to value the subject property.

In arriving at his opinion of value for the subject property for "the years 2005 and 2006"<sup>3</sup>, Mr. Cohen analyzed the actual income and expenses of the tennis facility from September, 2002 through August, 2006.<sup>4</sup> Mr. Cohen also examined the federal Form 990 tax returns of the Grande Meadows Racquet Club for its tax years 2003, 2004 and 2005. Lastly, Mr. Cohen reviewed the membership rates of two other area tennis facilities. He examined the rates as of late 2006 of the Enfield Tennis Club in Connecticut and of the Ludlow Tennis Club in Massachusetts. The rates for the Grande Meadows Racquet Club were as follows:

Family	\$525
Full Tennis	\$225
Seniors (62+)	\$175
Juniors (8-17)	\$75
Pee Wee (up to 7)	\$10

The hourly rate for tennis is typically \$34.00 per hour. Mr. Cohen concluded that the rates at the tennis facility

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<sup>3</sup> Mr. Cohen, both in his appraisal report and testimony, reported that he appraised the subject property as of January 1, 2005 and January 1, 2006, even though the appropriate dates of valuation for these appeals are January 1, 2004 for fiscal year 2005 and January 1, 2005 for fiscal year 2006.

<sup>4</sup> The fiscal year of the Meadows Racquet Club runs from September 1 to August 31 of each year, as reported on federal tax Forms 990 for fiscal years 2003 through 2005.

were in line with the other tennis clubs in the general area.

Mr. Cohen testified that the tax returns revealed that since the Enfield Tennis Club opened in 2003, the tennis facility experienced a severe drop in income. The income then increased slightly through calendar year 2005. In developing a capitalization of income approach, Mr. Cohen testified that he took the income as reported on the Federal Tax Form 990 for the tax year 2005 of \$247,759 and increased it by 20% to \$300,000 because "[a] typical purchaser always figures that he can do better than the current manager." He used this figure as a stabilized income for both fiscal years at issue. He then used the expenses as reported by the tennis facility for its fiscal year 2006 (September 1, 2005 through August 31, 2006) and reduced them by what he characterized as expenses that "went to the business" and are not directly related to the real estate, such as office supplies and telephone costs. The final result was a stabilized expense figure of \$161,140 for both fiscal years at issue. Deducting the expenses from his stabilized income resulted in a net operating income of \$138,140 for both fiscal years at issue.

Mr. Cohen derived a capitalization rate from a band-of-investment mortgage-equity analysis. For fiscal year 2005, he used a 70/30 loan-to-value ratio with an amortization period of twenty-five years. His mortgage loan rate was 8.5%, resulting in a mortgage constant of 0.06739. His equity-yield rate was 11%, yielding a constant of 0.033000. He made no deduction for mortgage amortization and appreciation in value. The resulting capitalization rate for fiscal year 2005 was 10.069%. Adding the appropriate tax factor for fiscal year 2005, the final overall capitalization rate was 11.7759%. For fiscal year 2006, Mr. Cohen decreased the mortgage-loan rate to 8%. The loan-to-value ratio and the equity-yield rate remained the same. He applied a tax factor of 0.015260, which resulted in an overall capitalization rate for fiscal year 2006 of 11.3090%.

Mr. Cohen next divided his net operating income by his overall capitalization rate. For fiscal year 2005, he divided \$138,140 by 11.7759%, which resulted in \$1,173,074, which he rounded up to reach an opinion of fair cash value of \$1,200,000. For fiscal year 2006, he divided \$138,140 by 11.3093, resulting in \$1,221,473, which he rounded down to reach an opinion of fair cash value of \$1,200,000.

The appellee presented its case through the testimony and appraisal report of its witness, James F. Fisher, a certified general appraiser. Based on his education and experience, the Board qualified Mr. Fisher as an expert in the area of real estate valuation. Mr. Fisher considered all three approaches to value in appraising the subject property.<sup>5</sup> He did not rely on the cost approach because of the difficulty of measuring depreciation. He instead relied on both the sales and income approaches to value. Mr. Fischer testified that the highest and best use of the subject property was its current use as an indoor recreational facility.

Mr. Fisher first analyzed the sales approach to value for fiscal year 2005. He examined six sales of what he considered comparable properties. The first sale was located at 120 Voles Road in the Town of Agawam, which he had appraised previously, and which sold in March of 2002 for \$1,755,000. The property consists of 6.97 acres improved with a warehouse containing a gross building area of 50,880 square feet. Mr. Fisher then adjusted the price per square foot by adding an upward adjustment of 5% per

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<sup>5</sup> Mr. Fisher's Complete Summary Appraisal Report cited both that the interest appraised for the subject property was "fee simple" and later the interest appraised was cited as "leased fee". It was his testimony that the reference to leased fee interests was a typographical error and that the interest he appraised was the fee simple interest. The Board found that he did in fact appraise the fee simple interest.

year for appreciation, a downward adjustment of 10% for building size, an upward adjustment of 5% for location, and a downward adjustment of 15% for condition/age/quality, resulting in an overall reduction of 20% in the per-square-foot price to arrive at an adjusted per-square-foot price of \$30.70 for the subject property.

The second sale he considered was 100 Dan Fox Drive in the City of Pittsfield, Massachusetts. This is an athletic facility, known as the Berkshire West Athletic Club, containing a pool, tennis courts and racquetball courts. The property sold in April of 2004 for \$1,617,500. The property contains 12.90 acres of land, improved with an athletic facility containing 47,280 square feet, 10% of which is occupied by office space. Using the same categories of adjustments, Mr. Fisher used an overall 5% downward adjustment of the \$34.21 per square foot sales price to reach an adjusted per-square-foot price of \$32.50 for the subject property.

His third comparable sale was 2043 Boston Road in Wilbraham, Massachusetts. It consists of 4.45 acres of land improved with a 24,320 square foot athletic facility occupied by a roller rink. The facility had been the former Wilbraham Tennis Club. It sold in June of 2000 for \$1,050,000, or \$43.17 per square foot. Using the same

categories of adjustment, Mr. Fisher found an overall 40% downward adjustment of the \$43.17 per-square-foot sales price to arrive at an adjusted per-square-foot price for the subject property of \$31.09.

His fourth comparable was 103 Gold Street in the Town of Agawam, Massachusetts. Mr. Fisher had previously appraised this property. The parcel consists of 2.02 acres of land improved with a 10,800 square foot building occupied by Gold Medal Gymnastics. The property sold in November of 2000 for \$332,311, a per-square-foot price of \$30.77. Using the same categories of adjustment, Mr. Fisher found an overall 30% downward adjustment to arrive at an adjusted per-square-foot price for the subject property of \$28.43.

His fifth comparable was 51 Denslow Street in the Town of East Longmeadow, Massachusetts. The comparable is an industrial property known as the Sunshine Arts Building. It is a 13.89-acre property improved with an industrial-style building containing 212,365 square feet. This property sold in February of 2002 for \$3,750,000, a per-square-foot selling price of \$17.66. Using the same categories of adjustment, Mr. Fisher found an overall 40% upward adjustment to arrive at an adjusted per-square-foot price for the subject property of \$27.19.

Mr. Fisher's last comparable sale was 2148 Boston Road in Wilberham. It is a 1.16-acre property improved with a 6,250 square-foot building occupied by GNR Gymnastics, which sold in October of 2004 for \$350,000. The per-square-foot selling price was \$56.00. Using the same categories of adjustment, Mr. Fisher found an overall 45% downward adjustment to arrive at an adjusted per-square-foot price for the subject property of \$30.80.

Mr. Fisher concluded that, pursuant to his sales analysis, his opinion of value for the subject property was between \$32.00 and \$35.00 per square foot. He then deducted a lump sum between \$425,000 and \$475,000 from the market value to account for capital expenditures required to create initial occupancy. This resulted in an adjusted per-square-foot price range between \$27 and \$29, which translated into a fair market value of \$2,150,000 for fiscal year 2005.

Mr. Fisher next considered the income-capitalization approach to value for fiscal year 2005. He reviewed ten industrial buildings in the immediate area and surrounding cities and towns with leased areas ranging from a low of 4,100 square feet to a high of 217,000 square feet. Rental rates per square foot varied between \$3.35 and \$6.95. All rental rates were triple-net leases and the lease terms

were all five years in length. None of Mr. Fisher's rental comparables was occupied by athletic facilities. The largest parcel was 5.27 acres.

It was Mr. Fisher's conclusion that a rental rate of \$3.25 per square foot for the subject property was appropriate. He then estimated that a 10% stabilized vacancy and collection loss was an appropriate deduction. He included a deduction of 2% from effective gross income to account for non-reimbursable management and administrative functions. Lastly, he deducted \$9,000, roughly \$10.00 per square foot, for reserves for replacement.

Mr. Fisher arrived at his overall capitalization rate by using the Korpacz Real Estate Investor Survey of overall capitalization rates and terminal growth rates for real estate investments nationwide, as reported in the First Quarter, 2006 edition of the publication, *Valuation Insights and Perspectives*. He used Class "A" investment grade warehouse properties with appeal to national investors. He then selected a basic yield rate of 16%, which he derived by analyzing composite investment yields of financial instruments ranging from risk-free treasuries to high risk junk bonds, as reported in the *Wall Street Journal*, July 19, 2005. He determined that a loan-to-value

ratio should be 75% financing to 25% equity contribution. Mr. Fisher arrived at an overall capitalization rate of 10.2%.

Mr. Fisher then applied his overall capitalization rate to his net operating income figure to arrive at \$2,070,136. He then deducted \$450,000, the estimated cost to complete the "shell area" portion of the tennis facility. Mr. Fisher thus arrived at \$2,070,136, which he rounded down to \$2,070,000, for his final market value obtained by the income-capitalization approach for fiscal year 2005.

Based on both his sales comparison approach and his income capitalization approach, Mr. Fisher's reconciled final conclusion of value for the subject property was \$2,100,000 for fiscal year 2005. Mr. Fisher increased this figure to \$2,150,000 for fiscal year 2006.

After considering all of the evidence, the Board found that the appellant did not demonstrate that the subject property was overvalued for fiscal year 2005. First, Mr. Cohen identified the effective dates of the appraisal as January 1, 2005 and January 1, 2006. However, the effective dates of valuation were January 1, 2004 for fiscal year 2005 and January 1, 2005 for fiscal year 2006. The Board thus found that the corresponding data used by

the appellant's expert in his income approach for fiscal year 2005 was not within the relevant time frame.

Secondly, Mr. Cohen erroneously relied on the tennis facility's income tax returns as the basis for his income-capitalization approach. However, the income tax returns lacked specificity regarding the tennis club's departmental incomes in relation to those of its competitors for purposes of analyzing the potential income that an athletic facility would generate in the marketplace. See *FITNESS, RACQUET SPORTS, AND SPA PROJECTS: A GUIDE TO APPRAISAL, MARKET ANALYSIS, DEVELOPMENT, AND FINANCING*, Arthur E. Gimmy, MAI and Brian B. Woodworth, American Institute of Real Estate Appraisers, (1992, p 139-142). The Board thus found that Mr. Cohen's reliance on income tax returns compromised the value he reached under the income-capitalization approach.

Finally, the club membership fees for Enfield Tennis Club and Ludlow Tennis Club as of late 2006 for his analysis of fee structures were too far beyond the assessment dates of January 1, 2004 and January 1, 2005 for fiscal year 2006 to be of any analytical value. Mr. Cohen's income-capitalization analysis, therefore, was not persuasive in rebutting the presumed validity of the subject assessment for fiscal year 2005.

The analysis of the appellee's expert for both fiscal years at issue also failed to provide reliable evidence of value. The sales used in Mr. Fisher's sales approach lacked the comparability of use required for any meaningful comparison. The only sale of a racquet facility, Berkshire West AC, located in Pittsfield, was approximately half the size of the subject, and Mr. Fisher's analysis lacked the specific analysis of both the facility's amenities and the conditions surrounding the sale to be of any probative value. The remaining five sales were either of industrial buildings or non-racquet recreational uses that ranged in adjustments for comparability to the subject of up to 45%. The Board thus found that these sales were not sufficiently comparable to the subject property to yield any meaningful comparison.

The appellee's income-capitalization approach also was not instructive. Mr. Fisher utilized rents and expenses of industrial buildings occupied for purposes other than recreation. There was no evidence that these types of rents or expenses reflected the market for recreational facilities. Moreover, the subject property was restricted by a Special Use permit, which would not have allowed any of the uses found in the comparables which Mr. Fisher used in both his sales and income capitalization approaches.

On the basis of the evidence, the Board found that the appellant did not meet its burden of proving a fair market value less than the assessed value for fiscal year 2005. Therefore, the Board upheld the subject assessment for fiscal year 2005 on the basis of its presumed validity. However, the Board noted that both experts agreed that the market for this type of facility remained flat from fiscal year 2005 to fiscal year 2006. Therefore, the Board found that the 14.5% increase in assessed value for fiscal year 2006 was not warranted and that the fiscal year 2006 assessment should be reduced to the fiscal year 2005 assessed value. Accordingly, the Board issued a decision for the appellee for fiscal year 2005 and a decision for the appellant for fiscal year 2006.

#### **OPINION**

Assessors are required to assess real estate at its fair cash value as of the first day of January preceding the fiscal year at issue. G.L. c. 59, § 38. Fair cash value is defined as the price upon which a willing buyer and a willing seller will agree if both 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 taxpayer to make out a right to an abatement as a matter of law. ***Schlaiker v.***

**Assessors of Great Barrington**, 365 Mass. 243, 245 (1974).

The assessment is presumed to be valid until the taxpayer sustains its burden of proving otherwise. **Id.** "[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 the instant appeals, the Board found that the appellant failed to meet its burden of proving overvaluation for fiscal year 2005. The appellant's expert, Mr. Cohen, used incorrect appraisal dates, and therefore, the corresponding data was not within the relevant time frame. Moreover, Mr. Cohen's reliance on the tennis facility's income tax returns as the basis for his income-capitalization approach provided incomplete information on the subject's potential income. Finally, the club membership fees for Enfield Tennis Club and Ludlow Tennis Club as of late 2006 for his analysis of fee structures were too far beyond the lien dates of January 1, 2004 for fiscal year 2005 and January 1, 2005 for fiscal year 2006 to be of any analytical value. Mr. Cohen's analysis, therefore, did nothing to rebut the presumed validity of the assessment for fiscal year 2005.

However, the appellant did meet its burden of proving overvaluation for fiscal year 2006. A taxpayer may prove a right to an abatement by proving that the assessors erred in their method of valuation. **General Electric**, 393 Mass. at 600. The Board found credible the testimony of both Mr. Cohen and Mr. Fisher that the market for facilities like the subject property remained flat from fiscal year 2005 to fiscal year 2006. Therefore, the Board found and ruled that the 14.5% increase in assessed value between fiscal year 2005 and fiscal year 2006 was not warranted.

Accordingly, the Board issued a decision for the appellee for fiscal year 2005 and a decision for the appellant for fiscal year 2006.

**THE APPELLATE TAX BOARD**

By: \_\_\_\_\_  
**Thomas W. Hammond, Jr., Commissioner**

**A true copy,**

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