



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.<sup>1</sup>

*Jacqueline M. Marshall, pro se, for the appellants.*

*Diane Peterson, assessor, for the appellee.*

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

On January 1, 2007 and January 1, 2008, Jacqueline M. Marshall and Richard J. Marshall were the assessed owners of a parcel of real estate located at 23 Barnes Hill Road in the Town of Berlin ("subject property"). The parcel contains approximately 3.5 acres of land and is improved with a contemporary-style single-family dwelling. The dwelling contains almost 3,000 square feet of gross living area above grade and another approximately 1,300 square feet in the rear walk-out basement level. There are three bedrooms, two full and one one-half bathroom, a living room, a dining area, a den, a recreation room, and an exercise room. The subject property's amenities include four fireplaces, a wood deck, a covered and screened porch, an in-ground pool, a pool house, rock retaining

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<sup>1</sup> Although not required to, the Board allowed the appellants' request for findings of fact and report in the informal, as well as the formal, appeal since the appeals were heard together and raised the same issues. See G.L. c. 58A, § 13.

walls, and a fence around the pool area. There is also an approximately 1,700-square-foot three-car garage built into the terraced front lower-level of the subject dwelling. All of the subject improvements are in good condition, of good quality, and made with custom materials.

The subject neighborhood consists of a variety of size and style single-family residential properties, which are well-maintained and situated on at least one-acre lots. The Board of Assessors of Berlin ("assessors") valued the subject property at \$676,800 for fiscal year 2008 and \$610,100 for fiscal year 2009 and assessed taxes thereon, at the rate of \$11.20 per thousand, in the amount of \$7,580.16 for fiscal year 2008 and at the rate of \$11.66 per thousand, in the amount of \$7,113.76 for fiscal year 2009.

On October 1, 2007 and September 30, 2008, Berlin's Collector of Taxes sent out the town's actual real estate tax notices for fiscal years 2008 and 2009, respectively. In accordance with G.L. c. 59, § 57, the appellants paid each fiscal year's taxes without incurring interest. On October 31, 2007 and November 3, 2008, the appellants timely filed their abatement applications for fiscal years

2008 and 2009, respectively.<sup>2</sup> On December 3, 2007, the assessors granted the appellants a partial abatement for fiscal year 2008 and lowered the subject property's assessed value by \$54,700 to \$622,100. On November 11, 2008, the assessors denied the appellants' abatement request for fiscal year 2009.<sup>3</sup> The appellants seasonably filed their appeals with the Appellate Tax Board ("Board") on February 19, 2008 for fiscal year 2008 and on December 26, 2008 for fiscal year 2009. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide the fiscal year 2008 informal appeal, and the Board found and ruled that it had jurisdiction to hear and decide the fiscal year 2009 formal appeal.

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<sup>2</sup> G.L. c. 59, § 59 requires that applications for abatement be filed: "on or before the last day for payment, without incurring interest in accordance with the provisions of chapter fifty-seven or section fifty-seven C, of the first installment of the actual tax bill issued upon the establishment of the tax rate for the fiscal year to which the tax relates." According to G.L. c. 59, § 57, the applicable payment section for these appeals, the last day for payment is November 1<sup>st</sup>. However, in 2008, November 1<sup>st</sup> fell on a Saturday. When the last day of a filing period falls on a Saturday, Sunday, or legal holiday, the filing is still considered timely if it is made on the following business day. G.L. c. 4, § 9. Accordingly, the Board found that the appellants timely filed their application for abatement for fiscal year 2009 on Monday, November 3, 2008.

<sup>3</sup> The assessors mistakenly termed their denial a "deemed denial," which, under the circumstances present in this appeal, constitutes harmless error.

In their applications for abatement and petitions to this Board, and at the hearing of these appeals, the appellants contended that the subject property was overvalued because of several errors on the subject property's property record card, the subject dwelling's functional obsolescence, and the lower adjusted sale values that their real estate valuation expert, Charlotte L. Johnson, derived from her comparable-sales appraisal. Taking these factors into consideration, the appellants placed the fair cash value of the subject property at \$545,000 for fiscal year 2008 and \$520,000 for fiscal year 2009.

According to Ms. Johnson, the subject dwelling's functional obsolescence related to "the lack of a formal dining room, the small 'den' [in the walk-out basement level] in lieu of a first-floor family room, and the entry into the living room (with no foyer)" as compared to other two-story Colonial homes in the area. Ms. Johnson quantified these perceived deficiencies in functional utility, along with what she considered to be the subject property's diminished appeal because of its classification, according to her, as a conventional "ranch," as necessitating an "aggregate line item adjustment of 5%." The appellants also maintained that the subject property's

property record card contained several errors including placing the number of garage spaces at four instead of three.

Ms. Johnson performed a sales-comparison appraisal for fiscal year 2008 using five 2005 or 2006 sales of residential properties in Berlin within about one-half to one and three-quarters miles of the subject property. Her report contained basic information about her purportedly comparable properties as well as photographs. Three of these sales were Cape Cod or Colonial-style homes while the other two consisted of a conventional raised ranch and a conventional ranch. The sale prices for these five properties ranged from \$395,000 for the conventional raised ranch to \$699,999 for the Colonial. The conventional ranch sold for \$720,000 but that sale included a separate 3.9-acre buildable lot, which Ms. Johnson valued at \$250,000. After adjustments, her indicated values ranged from \$518,130 to \$574,249. Utilizing this information, Ms. Johnson estimated the fair cash value of the subject property, as of January 1, 2007, at \$545,000.

Ms. Johnson also performed a sales-comparison appraisal update for fiscal year 2009 using three 2007 sales of other residential properties in Berlin within three-quarters to one and one-half miles of the subject

property. Her updated report contained basic information about these three purportedly comparable properties as well as photographs. The conventional ranch-style home that she selected for comparison sold for \$379,900; the contemporary saltbox-style home sold for \$530,000, and the Colonial-style home sold for \$600,000. After adjustments, the indicated values that she derived from these properties ranged from \$469,950 to \$546,300. Using this data, Ms. Johnson estimated the fair cash value of the subject property, as of January 1, 2008, at \$520,000.

In their case-in-chief, the assessors introduced photographs, depicting the subject property as of the relevant assessment dates, and a comparable-sales and assessment submission, which included basic data and photographs of their comparables. The assessors' primary emphasis was the similarity in contemporary styling of their 68 Peach Hill Road comparable compared to the contemporary style of the subject property. The 68 Peach Hill Road property sold in 2006 for \$699,900. The assessors convincingly demonstrated that the subject property's design and quality of construction and materials were far superior to those ordinarily considered part of a conventional ranch or conventional raised ranch. The assessors also explained that they had already lowered the

subject property's assessment for fiscal year 2008 by \$54,700 to account for several errors in the subject property's property record card as well as the subject property's functional and design deficiencies raised by the appellants.

On the basis of all of the evidence, the Presiding Commissioner found for the fiscal year 2008 informal appeal and the Board found for the 2009 formal appeal that the appellants failed to meet their burden of proving that the subject property was overvalued. More specifically, they found that the subject property was, as the assessors demonstrated, an upscale contemporary-style dwelling and not a mere conventional ranch or conventional raised ranch, as Ms. Johnson maintained. The Presiding Commissioner and the Board also found that the adjustments that Ms. Johnson used in her comparable-sales appraisal and updated appraisal were more appropriate for a comparison to a conventional ranch or conventional raised ranch-style home than to an upscale contemporary-style home, like the subject dwelling. The Presiding Commissioner and the Board, therefore, found that most of Ms. Johnson's adjustments were not appropriate or accurate for formulating a range of indicated sale prices to determine the fair cash value of the subject property. Accordingly,

the Presiding Commissioner and the Board found that her conclusions of value were unreliable.

In addition, the Presiding Commissioner and the Board found that the comparable sale upon which the assessors primarily relied in their presentation, 68 Peach Hill Road, tended to support the subject property's assessed value, as abated, for fiscal year 2008 and its assessed value for 2009. They also found that the \$54,700 reduction in the subject property's fiscal year 2008 original assessment, which, along with a further reduction, was carried forward to the fiscal year 2009 assessment, more than accounted for any errors in the original assessment as well as the functional deficiencies associated with the subject property.

On these bases, the Presiding Commissioner found that the appellants failed to meet their burden of proving that their property was overvalued, as abated, for fiscal year 2008, and the Board found that the appellants failed to meet their burden of proving that the subject property was overvalued for fiscal year 2009. The Presiding Commissioner, therefore, decided the fiscal year 2008 informal appeal for the appellee, and the Board decided the fiscal year 2009 formal appeal for the appellee.

## OPINION

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 appellants have 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 [and Presiding Commissioner are] 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 ***Schlaiker***, 365 Mass. at 245).

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.*, 393 Mass. at 600 (quoting *Donlon v. Assessors of Holliston*, 389 Mass. 848, 855 (1983)). Actual sales generally "furnish strong evidence of market value, provided they are arm's-length transactions and thus fairly represent what a buyer has been willing to pay for the property to a willing seller." *Foxboro Associates v. Assessors of Foxborough*, 385 Mass. 679, 682 (1982); *New Boston Garden Corp. v. Assessors of Boston*, 383 Mass. 456, 469 (1981); *First National Stores, Inc. v. Assessors of Somerville*, 358 Mass. 554, 560 (1971). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date contain credible data and information for determining the value of the property at issue. See *McCabe v. Chelsea*, 265 Mass. 494, 496 (1929). "A major premise of the sales comparison approach is that an opinion of the market value of a property can be supported by studying the market's reaction to comparable and competitive properties." APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 297 (13<sup>th</sup> ed., 2008).

In these appeals, the Presiding Commissioner found that the appellants failed to meet their burden of demonstrating that the subject property was overvalued in the fiscal year 2008 informal appeal, and the Board found that the appellants failed to meet their burden of proving

that the subject property was overvalued in the fiscal year 2009 formal appeal. More specifically, they found that the subject property was, as the assessors demonstrated, an upscale contemporary-style dwelling and not a mere conventional ranch or conventional raised ranch, as Ms. Johnson maintained. The Presiding Commissioner and the Board also found that the adjustments that Ms. Johnson used in her comparable-sales appraisal and updated appraisal were more appropriate for a comparison to a conventional ranch or conventional raised ranch-style home than to an upscale contemporary-style home, like the subject dwelling. The Presiding Commissioner and the Board, therefore, found that most of Ms. Johnson's adjustments were not appropriate or accurate for formulating a range of indicated sale prices to determine the fair cash value of the subject property. Accordingly, the Presiding Commissioner and the Board found that her conclusions of value were unreliable. "In the sales comparison approach, the appraiser develops an opinion of value by analyzing . . . sales of properties that are similar to the subject property," THE APPRAISAL OF REAL ESTATE at 297, and by looking for properties with, among other things, "similar . . . property types." *Id.* at 301. In these appeals, because Ms. Johnson misclassified

the subject property's property type, her analyses were undermined.

Furthermore, the Presiding Commissioner and the Board found that the comparable sale upon which the assessors primarily relied in their presentation, 68 Peach Hill Road, tended to support the subject property's assessed value, as abated, for fiscal year 2008 and its assessed value for 2009. They also found that the \$54,700 reduction in the subject property's fiscal year 2008 original assessment, which, along with a further reduction, was carried forward to the fiscal year 2009 assessment, more than accounted for any assessment errors as well as functional deficiencies associated with the subject property.

On these bases, the Presiding Commissioner found that the appellants failed to meet their burden of proving that their property was overvalued, as abated, for fiscal year 2008, and the Board found that the appellants failed to meet their burden of proving that the subject property was overvalued for fiscal year 2009.

"The board [is] not required to believe the testimony of any particular witness but [may] accept such portions of the evidence as appear to have the more convincing weight. ***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." *Cumington School of the Arts, Inc. v. Assessors of Cumington*, 373 Mass. 597, 605 (1977).

The Presiding Commissioner, therefore, decided the fiscal year 2008 informal appeal for the appellee, and the Board decided the fiscal year 2009 formal appeal for the appellee.

**APPELLATE TAX BOARD**

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

A true copy,

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