

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

PAUL & SANDRA ABDELLA

v.

BOARD OF ASSESSORS OF  
THE TOWN OF OXFORD

Docket No. F298293

Promulgated:  
December 4, 2009

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 Oxford ("appellee" or "assessors"), to abate taxes on certain real estate in the Town of Oxford, owned by and assessed to Paul and Sandra Abdella (jointly the "appellants") under G.L. c. 59, §§ 11 and 38 for fiscal year 2008 ("fiscal year at issue").

Commissioner Mulhern ("Presiding Commissioner") heard this appeal and, in accordance with G.L. c. 58A, § 1 and 831 CMR 1.20, issued a single-member decision for the appellee.

These findings of fact and report are made pursuant to a request by the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

*Paul Abdella, pro se*, for the appellants.

*Patrick J. Costello, Esq.* for the appellee.

## **FINDINGS OF FACT AND REPORT**

Based on the evidence and testimony offered at the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2007, the appellants were the owners of a 2.06-acre parcel of land, improved with a wood-framed, single-family home, located at 7 Merriam District in Oxford, Massachusetts ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$153,500 and assessed a tax thereon, at the rate of \$10.39 per \$1,000, in the total amount of \$1,594.88. On April 14, 2008, the appellants timely filed an abatement application for real estate taxes for fiscal year 2008, which the assessors denied on June 18, 2008. On July 18, 2008, the appellants timely filed their petition under formal procedure with the Appellate Tax Board ("Board"). Based on these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

On January 15, 2004, a provider of home heating oil overfilled the oil tank located on the subject property, causing about 650 gallons of heating oil to spill into the basement of the subject property. Because of the damage

caused by the oil spill, the appellants maintained that the subject property had no value for the fiscal year at issue.

The appellants also had filed an appeal with the Board concerning the valuation of the subject property for the previous fiscal year. The appellee valued the subject property at \$322,400 for fiscal year 2007, and the appellants claimed that the subject property had no value. On October 25, 2007, the Board, after taking into consideration the oil spill and the remediation activities completed as of the relevant assessment date, issued a decision reducing the assessed value of the subject property as of January 1, 2006 to \$153,500 and granted an abatement of \$897.82. The appellants appealed this decision to the Appeals Court, which affirmed the Board's decision. *Abdella v. Board of Assessors of Oxford*, 73 Mass. App. Ct. 1102 (Mass. App. Ct. 2008) ("fiscal year 2007 appeal").

For fiscal year 2008, the assessors valued the subject property at the value determined by the Board for the preceding fiscal year, \$153,500.<sup>1</sup> The appellants do not dispute that there has been no appreciable change in the

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<sup>1</sup> Where, as here, the assessors maintained the Board's determination of value for the year immediately preceding the fiscal year at issue, the burden of production does not shift to the assessors to prove that the assessed value was warranted. G.L. c. 58A, § 12A.

condition of the subject property between the relevant valuation dates for fiscal years 2007 and 2008.

In support of their claim that the subject property was overvalued for fiscal year 2008, the appellants submitted the property record card for the subject property and a series of memoranda and correspondence between the appellants and several administrative oversight agencies, such as the Oxford Board of Health, Oxford Board of Selectmen, and Oxford Land Management Office, regarding the appellants' ongoing efforts to restore the property. Mr. Abdella also testified concerning the oil spill and the resulting hardship on his family. He then explained that the subject home was demolished, except for the foundation, in April of 2008, and that a new home was constructed on the existing foundation in November of 2008.

The assessors contended that the appellants presented no evidence quantifying the damage to the subject property and thus failed to meet their burden of proving that the subject property was overvalued. The assessors pointed out that the appellants did not present reliable evidence of the subject property's condition as of the relevant assessment date, anticipated clean-up costs as of the relevant assessment date, or evidence of how the costs to cure the subject property would affect a potential buyer's

valuation of the property as of the relevant assessment date. The appellants also failed to offer any other credible evidence indicating an error in the assessor's valuation of the subject property. Further, they contended, the appellants offered no evidence that the oil spill damaged the land, foundation, and improvements other than his residence, which are the only components of the subject property that the assessors valued and taxed.

The property record card for fiscal year 2008 indicated that the appellee valued the land component of the subject property at \$128,200, which value was derived from the Board's decision in the fiscal year 2007 appeal. The property record card also indicates that the subject property included other structural elements, including a one-car garage, two wooden decks, an open porch, an enclosed porch, and a shed. Although the demolition and reconstruction took place after the relevant assessment date, the Board found that, based on Mr. Abdella's testimony, the foundation and these miscellaneous structures were present as of January 1, 2007; moreover, the subject property also included a driveway and utility connections. The Presiding Commissioner found that the total value of the foundation and these miscellaneous structures and connections was at least \$25,300 as of the

relevant assessment date. Thus, the Presiding Commissioner found and ruled that the total assessed value of \$153,500 for the subject property was reasonable and fully supported by the evidence.

On the basis of the evidence presented, and for the reasons stated more fully in the Opinion, the Presiding Commissioner found that the appellants did not meet their burden of proving that the subject property was overvalued for fiscal year 2008. Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

#### 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. 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 taxpayer has the burden of proving that the subject property has a lower value than that assessed.

**Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974) (citing **Judson Freight Forwarding Co. v. Commonwealth**, 242 Mass. 47, 55 (1922)). The assessment is presumed to be valid until the taxpayer sustains its burden of proving otherwise. **General Electric Co. v. Assessors of Lynn**, 393 Mass. 591, 598 (1984) (citing **Schlaiker**, 365 Mass. at 245). The taxpayer may sustain this burden by introducing evidence of fair cash value, or by proving that the assessors erred in their method of valuation. **General Electric Co.** 393 Mass. at 600 (citing **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

Generally, real estate valuation experts, Massachusetts courts, and this Board rely upon three approaches to determine the fair cash value of property: income capitalization; sales comparison; and cost reproduction. **Correia v. New Bedford Redevelopment Authority**, 375 Mass. 360, 362 (1978). “[S]ales of property usually 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. Board of Assessors of Foxborough**, 385 Mass. 679, 682 (1982).

While the appellants produced evidence that the subject property was affected by contamination, they failed

to meet their burden of proving that the subject assessment failed to account for that effect. "The Board has ruled that simply subtracting the putative, ambiguous, and unproven costs from the subject property's value is not an appropriate valuation technique for determining the effects of contamination on the value of the subject real estate." ***Estate of John G. Grant, Herbert Gurney, Exec. v. Commissioner of Revenue***, Mass. ATB Findings of Fact and Reports 1999-418, 437 (citing ***Morris Realty Trust v. Assessors of Randolph***, Mass. ATB Findings of Fact and Reports 1998-825 and ***Reliable Electronic Finishing Co. v. Bd. of Assessors of Canton***, Mass. ATB Findings of Fact and Reports 1990-242, *aff'd*, 410 Mass. 381 (1991)).

In ***Reliable Electronic Finishing Co. v. Bd. of Assessors of Canton***, Mass. ATB Findings of Fact and Reports 1990-242, *aff'd*, 410 Mass. 381 (1991), the taxpayer claimed that the cost of cleaning up the property, contaminated by an oil spill, had a negative impact on the fair cash value of the property. ***Id.*** at 1990-254. Although the property required additional restoration, the taxpayer failed to present evidence at trial pertaining to the level of contamination still on the property as of the assessment date, the cost to remove the contamination, or the effect of the cost of removal on the fair market value of the

property. *Id.* at 1990-254-56. Despite evidence that the property was still contaminated at the time of assessment, the Supreme Judicial Court affirmed the Board's decision that the taxpayer did not meet his burden of proving quantifiably "how the cost to cure a present defect would affect the value of the property to a potential buyer." *Reliable Electronic Finishing*, 410 Mass. at 383.

The appellants in the instant appeal have similarly failed to present reliable evidence relating to the effect of the oil spill on the fair cash value of the subject property as of January 1, 2007. The appellants did not submit into evidence any appraisals, estimates, or opinions indicating the effect of the contamination on the fair cash value of the subject property, or any other credible evidence indicating an error in the assessor's valuation of the subject property. Moreover, as explained in the Findings, the Board found that the evidence of record supported the subject assessment. The Presiding Commissioner thus found and ruled that the appellants did not meet their burden of proving that the subject property was overvalued.

Accordingly, the Presiding Commissioner issued a decision for the appellee in this appeal.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas J. Mulhern, Commissioner

A true copy,

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