

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

S. ALTON SMYTH, III &  
SUSAN C. SMYTH

v.

BOARD OF ASSESSORS OF  
THE TOWN OF UXBRIDGE

Docket No. F307071

Promulgated:  
April 13, 2011

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 Uxbridge ("assessors" or "appellee") to abate taxes on certain real estate owned by and assessed to S. Alton & Susan C. Smyth ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2010 ("fiscal year at issue").

Chairman Hammond ("Presiding Commissioner") heard this appeal under G.L. c. 58A, § 1A and 831 CMR 1.20 and issued a single-member decision for the appellants.

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.

*S. Alton Smyth, pro se*, for the appellants.

*Paula Dumont*, assessor, for the appellee.

## **FINDINGS OF FACT AND REPORT**

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

On January 1, 2009, the appellants were the assessed owners of a 15.24-acre parcel of real estate, improved with a ranch-style residential dwelling located at 594 Blackstone Street in the Town of Uxbridge ("subject property"). For fiscal year 2010 ("fiscal year at issue"), the assessors valued the subject property at \$443,900 and assessed a tax thereon, at the rate of \$12.55 per thousand, in the amount of \$5,570.95. In accordance with G.L. c. 59, § 57C, the appellants paid the tax due without incurring interest. On February 18, 2010, in accordance with G.L. c. 59, § 69, the appellants filed an Application for Abatement with the assessors, which the assessors denied on March 10, 2010. In accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed their appeal with the Appellate Tax Board ("Board") on June 1, 2010. On the basis of these facts, the Presiding Commissioner found that the Board had jurisdiction to hear and decide this appeal.

The subject property consists of an approximately 15.24-acre parcel, which is almost rectangular in shape with approximately 299 feet of frontage. The parcel is located at the intersection of Blackstone Street and Millville Road (State

Route 122). The parcel is sloping to the rear and is vegetated with grass, shrubs and trees. The parcel is improved with a single-family, one-story, ranch-style home, originally constructed in 1958, with subsequent additions. The subject dwelling has a stone foundation, vinyl siding, and an asphalt-shingle roof. The dwelling has a total of eight rooms, including three bedrooms, as well as two full bathrooms, with a total finished living area of 2,676 square feet. The home also has one fireplace, a one-car attached garage, a full, unfinished basement, and a 432-square-foot porch. The home is heated by an oil-fired, forced hot-air system, and there is also a central air-conditioning system. Electric and telephone utilities are available to the site and the property is served by a private well and septic system. The subject property is also improved with a 936-square-foot free-standing garage building, and also a 2,800-square-foot "Quonset" hut.

The appellants presented their case through the testimony of Mr. Smyth and also the testimony and appraisal report of William F. Curley, whom the Presiding Commissioner qualified as a real estate valuation expert. Mr. Curley's appraisal report included a comparable-sales analysis using four properties that he deemed comparable to the subject property. Sale number one, located at 73 Ironstone Road, is a 1.4-acre parcel improved with a split-entry style dwelling with a total of six rooms,

including three bedrooms and also two bathrooms, with a total living area of 1,445 square feet. There is a two-car under garage. The remainder of the basement is finished and includes a workshop and also a full bathroom. This property sold on April 16, 2008 for \$261,000.

Sale number two, located at 139 Oak Street, is a 5.5-acre parcel improved with a Colonial-style home built circa 1880. The dwelling has a total of seven rooms, including four bedrooms and one bathroom, with a total living area of 1,954 square feet. There is a one-car detached garage. This property sold in an estate sale on December 31, 2007 for \$290,000.

Sale number three, located at 234 Douglas Street, is a 3.68-acre parcel improved with a gambrel-style log cabin. The dwelling has a total of seven rooms, including four bedrooms and also one full bathroom, with a total living area of 1,760 square feet. There is a two-car detached garage. The property, which was bank owned, sold for \$307,500 on June 13, 2008.

Finally, sale number four, located at 580 Blackstone Street, is a 2.04-acre parcel improved with a Colonial-style home, which contains approximately 2,799 square feet of finished living area. The dwelling has a total of nine rooms, including three bedrooms and also two full bathrooms and one half bathroom. There are five fireplaces, a two-car attached garage, and also an in-ground swimming pool and storage shed. The lower

level is finished with "in-law" potential and includes a second kitchen, a large family room with a fieldstone fireplace, and a full bathroom. The property sold on March 11, 2009 for \$279,000.

Mr. Curley made adjustments to his chosen comparables for various factors including time of sale, living area, age, condition, and number of bedrooms and bathrooms. Having taken these factors into consideration, Mr. Curley arrived at adjusted sale prices for the properties ranging from \$265,050 to \$322,875, and an indicated value for the subject property of \$290,000.

In support of their assessment, the assessors relied on the testimony of Paula Dumont, chief assessor for Uxbridge. Ms. Dumont offered into evidence a list of seven sales of ranch-style homes that sold during 2008 with sale prices that ranged from \$188,500 to \$440,000. The finished living areas for these properties ranged from 960 square feet to 1,240 square feet. No other information, such as lot size or additional features, was provided. The assessors also offered into evidence a sales-comparison analysis of three ranch-style properties that sold during the period January 25, 2008 through July 29, 2010. These properties ranged in size from 2.16 acres to 7.45 acres, with finished living areas that ranged from 1,240 square feet to 2,916 square feet. The purportedly comparable properties' sale

prices ranged from \$315,000 to \$440,000, with assessed values that ranged from \$336,100 to \$504,700.

Based on the evidence presented, the Presiding Commissioner found that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue. The Presiding Commissioner found that the best evidence of the subject property's fair market value as of January 1, 2009, was the March 11, 2009 sale of 580 Blackstone Street. The Presiding Commissioner found that this property, which is located adjacent to the subject property, has a similar location and, although the dwelling is a different style, the condition and finished living area are similar to that of the subject property. The Presiding Commissioner further found, however, that the subject property's excess acreage and the additional garage and "Quonset" hut warranted an upward adjustment to the sale price.

Accordingly, the Presiding Commissioner determined that the fair cash value of the subject property for the fiscal year at issue was \$365,500. The Presiding Commissioner therefore issued a decision for the appellants in this appeal and granted an abatement of \$983.92.

#### **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. The fair cash value of a property is defined as the price upon which a willing buyer and a willing seller would agree if both were 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. **Schlaiker v. Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). The assessment is considered to be valid unless the taxpayer meets its burden and proves otherwise. *Id.* 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 (1984) (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

Generally, real estate valuation experts and the Massachusetts courts rely upon three approaches to determine the fair cash value of property: income capitalization, sales comparison, and cost reproduction. **Correia v. New Bedford Redevelopment**, 375 Mass. 360, 362 (1978). "The board is not required to adopt any particular method of valuation." **Pepsi-Cola Bottling Co. v. Assessors of Boston**, 397 Mass. 447, 449 (1986).

Sales of comparable realty in the same geographic area and within a reasonable time of the assessment date generally contain probative evidence for determining the value of the property at issue. **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2008-321, 400 (citing **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929)), *aff'd*, 73 Mass. App. Ct. 1107 (2008). When comparable sales are used, however, allowances must be made for various factors which would otherwise cause disparities in the comparable-sales properties' sale prices. See **Pembroke Industrial Park Co., Inc. v. Assessors of Pembroke**, Mass. ATB Findings of Fact and Reports 1998-1072, 1082 (and the cases cited therein); APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 307 (13<sup>th</sup> ed., 2008) ("After researching and verifying transactional data and selecting the appropriate unit of comparison, the appraiser adjusts for any differences.")

Based on the evidence presented, the Presiding Commissioner found that the appellants met their burden of proving that the subject property was overvalued for the fiscal year at issue. The Presiding Commissioner found that the best evidence of the subject property's fair market value as of January 1, 2009, was the March 11, 2009 sale of 580 Blackstone Street. The Presiding Commissioner found that both the location and finished living area of the dwelling are similar to the subject property. The Presiding Commissioner further found, however, that the subject

property's excess acreage and the additional garage and "Quonset" hut warranted an upward adjustment to the sale price.

"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 board." **Cumington School of the Arts, Inc. v. Assessors of Cumington**, 373 Mass. 597, 605 (1977).

After evaluating all of the evidence, the Presiding Commissioner found and ruled that the fair cash value of the subject property for the fiscal year at issue was \$365,500. Accordingly, the Presiding Commissioner found that the appellants met their burden of proving that the subject property was overvalued for fiscal year 2010. The Presiding Commissioner therefore issued a single-member decision for the appellants in this appeal and granted an abatement in the amount of \$983.92.

**APPELLATE TAX BOARD**

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

A true copy,

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