COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

JOSEPH ANDREOZZI & OTHERS	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF SEEKONK**
Docket No. F304619		Promulgated: September 10, 2010

This is an appeal originally filed under the informal procedure[1] pursuant to G.L. c. 58A, § 7A and c. 59, §§ 64 and 65 from the refusal of the appellee to abate taxes on certain real estate located in the Town of Seekonk, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2009.

Commissioner Rose ("Presiding Commissioner") heard the appeal and, in accordance with G.L. c. 58A, § 1A 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 appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

Joseph Andreozzi, pro se, for the appellants.

Theodora Gabriel, assessor, for the appellee.

[1] The appellee, in accordance with G.L. c. 58A, § 7A, elected to have the appeal transferred to the formal procedure.

FINDINGS OF FACT AND REPORT

On the basis of the exhibits and testimony offered into evidence during the hearing of this appeal, the Presiding Commissioner made the following findings of fact.

On January 1, 2008, the appellants were the assessed owners of a parcel of real estate located at 24 Erimlinda Street in the Town of Seekonk ("subject property"). For fiscal year 2009, the Board of Assessors of Seekonk ("assessors") valued the subject property at $115,700 and assessed a tax thereon, at the rate of $9.64 per thousand, in the total amount of $1,115.35. The appellants paid the tax without incurring interest.[2] On Monday, February 2, 2009,[3] the appellants timely applied for abatement in writing to the asessors, which they denied on March 25, 2009. On June 22, 2009, the appellants seasonably appealed to the Appellate Tax Board ("Board"). On the basis of

[2] Because the tax is not "more than $3,000," timely payment is not a prerequisite for jurisdictional purposes. G.L. c. 59, § 64.

[3] 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, § 57C, the applicable payment section for this appeal, the last day for payment is February 1st. However, in 2009, February 1st fell on a Sunday. When the last day of a filing period falls on a Sunday or legal holiday, the filing is still considered timely if it is made on the following business day. *See* G.L. c. 4, § 9. Accordingly, the Presiding Commissioner found that the appellants timely filed their abatement application on Monday, February 2, 2009.

these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over the instant appeal.

The subject property consists of a vacant, unimproved lot located at the cul de sac of Erimlinda Street, in an area zoned for residential use. It is rectangular in shape and contains 10,000 square feet of land. The subject property is serviced by electricity but not by water or sewer. The subject property was previously used for the operation of a metal scrap and salvage business known as Seekonk Salvage Company.[4] At the time of the appeal, the subject property was being leased for the storage of commercial trucks.

The appellants contended that the subject property was overvalued. Mr. Andreozzi presented the appraisal report and testimony of James A. Houle, a certified general appraiser, whom the Presiding Commissioner qualified as an expert in the area of real estate valuation. According to Mr. Houle, the highest and best use of the subject property would be as a single-family residence. However, Mr. Houle cited impediments to developing the subject property to meet its highest and best use. First, he maintained that the subject property was encroached in the rear by

[4] The appellant entered into evidence a Superior Court decision dated May 2, 1990, which allowed the parking and storage of trucks on the subject property, but disallowed any further crushing of automobiles and storing of crushed automobiles or automobile parts.

wetlands, which Mr. Houle estimated would reduce the buildable area of the subject lot by about 20-25%. Second, the subject property had no water delivery system in place. Access to the public water supply would require the excavation of Erimlinda Street. However, the appellants offered into evidence a letter from the Seekonk Public Works Department explaining that, because Erimlinda Street had been recently paved in July, 2009, no excavating of the road would be permitted before August, 2014, per Seekonk by-law. The alternative, Mr. Houle offered, would be to dig a well, but in Mr. Houle's opinion, the subject property's reduced buildable-lot size likely would not accommodate the construction of a septic system and a well with the required distances between each. Mr. Houle further opined that a septic system and a house could not be accommodated on the property unless the house were very small, and that such a substandard structure would bring down the value of the entire lot.

Mr. Houle further opined that the market for vacant lots has been dwindling every year since 2005, because properties with "existing houses are selling for amounts far lower than the lowest cost to build new." He also claimed that the subject property was not in a premium location in Seekonk. He thus concluded that "[a]ll the

steps necessary to build on this lot, and the danger that approvals may not ever be obtained, make this lot very undesirable in the market."

Mr. Houle next offered a comparable-sales analysis using all sales of vacant lots in Seekonk and all sales of single-family residences within one mile of the subject property. His generalized findings with respect to sales of vacant land during calendar year 2008 are reproduced in the following table.

2008 vacant land sales	Average selling price	$/sf low	$/sf high
8 sales	$163,750	$2.60	$5.26

At 10,000 square feet for the subject property, Mr. Houle's findings would generate fair market values within the range of $26,000 to $52,600 for the subject property for the fiscal year at issue.

Mr. Houle then claimed that "a better indicator" of value would be using sales of single-family residences and then applying a ratio of average land value to total improvement value, with land value representing 30% of the sale price. With respect to calendar year 2008, Mr. Houle proffered that the average selling price of a single-family residence within one mile of the subject property was $285,000, and 30% of this was $85,500. Mr. Houle next applied "applicable discounts" to this figure for the

wetlands, water connection and septic issues. He opined that the water connection would cost a minimum of $15,000, the septic design would cost $3,000, and the wetlands would further reduce the value of the subject property by about 10%. He then factored an additional 10% discount to reflect the subject property's reduced "overall appeal" caused by all of these factors. Applying these discounts to the $85,500 value yielded a final indicator of value for fiscal year 2009 of $50,400, which he rounded to $50,500. Mr. Houle's final opinion of value for the subject property was thus $50,500.

Theodora Gabriel, Assessor, testified on behalf of the appellee. Ms. Gabriel contended that the subject assessment already accounted for the various impediments to building upon the subject property. She submitted the fiscal year 2009 property record card and a computer printout of the fiscal year 2009 tax bill for the subject property, which both indicated that the subject property was being valued as class 131 "potentially developable." Ms. Gabriel also demonstrated that the subject property was not subject to a wetlands buffer zone. She presented as evidence the application which Mr. Andreozzi had submitted to the Seekonk Conservation Commission, requesting permission to erect a shed on the subject property. The

application indicated that the subject property "is not an area subject to protection under the act." Pursuant to this application, Mr. Andreozzi was granted a building permit to construct a 20-by-21-foot shed on the subject property on July 10, 2008.

Ms. Gabriel next offered a comparable-sales analysis using six purportedly comparable properties. The purportedly comparable properties were recently developed and each contained a single-family residence. Their sales had occurred during calendar year 2007, before the properties were developed. The comparable properties ranged in size from 22,500 square feet to 32,200 square feet and ranged in sale price from $165,000 to $235,000. Ms. Gabriel contended that the comparable properties demonstrated that the subject assessment adequately accounted for the impediments to developing the subject property.

On the basis of these findings, the Presiding Commissioner found that the appellants presented insufficient evidence to demonstrate that the subject property was overvalued. In particular, the Presiding Commissioner was not persuaded by the testimony of Mr. Houle regarding the specific impediments to building on the subject property, because, as will be described further

in the following Opinion, Mr. Houle was not a licensed engineer, architect or contractor, and thus lacked the expertise to present a persuasive opinion as to these conditions or their cost effect on the subject property's value. Moreover Mr. Houle's comparable-sales analysis lacked specificity with respect to features of the comparable properties which he used. The analysis was thus vague and lacked persuasive weight. Further, the Presiding Commissioner found that the evidence which the assessors presented was credible and supported the subject assessment. The Presiding Commissioner thus ultimately found that the appellants failed to meet their burden of proving that the subject property was overvalued for fiscal year 2009. Accordingly, the Presiding Commissioner issued a decision for the appellee in the instant 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 determined as of the first day of January of each year. G.L. c. 59, §§ 2A and 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 subject 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 is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayer[] sustain[s] the burden of proving the contrary.'" ***General Electric Co. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

In appeals before the 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)).

In the present appeal, the appellants presented the testimony and appraisal report of Mr. Houle, which cited

purported impediments to developing the subject property, particularly the presence of wetlands and water and septic connection issues. Mr. Houle next estimated costs associated with developing the subject property with these impediments. However, "[t]he Courts and this Board have found and ruled consistently that only qualified engineers, architects, or contractors should present cost estimates in most circumstances." ***Cnossen v. Board of Assessors of Uxbridge,*** Mass. ATB Findings of Fact and Reports 2002-675, 690 (citing ***Tiger v. Mystic River Bridge Authority,*** 329 Mass. 514, 519 (1952) and ***Maryland Cup Corp. v. Assessors of Wilmington,*** Mass. ATB Findings of Fact and Reports 1988-169). Mr. Houle was not a licensed engineer, architect, or contractor. The Presiding Commissioner thus found and ruled that Mr. Houle was not competent to offer costs or applicable discounts to the subject property's fair market value for impediments to development caused by the presence of wetlands or the construction of water delivery and septic systems. *See* ***Cnossen,*** Mass. ATB Findings of Fact and Reports at 2002-690 (finding that the witnesses' lack of qualifications substantially diminished the probative value of their testimony relating to the reproduction-cost approach); *see also* ***Mason v. Board of***

Assessors of Winchester, Mass. ATB Findings of Fact and Reports 2004-110, 143.

Furthermore, the Presiding Commissioner was not persuaded by Mr. Houle's comparable-sales analysis, which was merely a generic summary of sale prices from sales of unidentified vacant lots in Seekonk and sales of unidentified single-family residences within one mile of the subject property, without any specifications or adjustments for features which would affect a property's fair market price, including size, location and condition. The Presiding Commissioner found and ruled that, without evidence of the comparability of the comparable-sale properties with the subject and appropriate adjustments for differences, the comparable-sales analysis was devoid of persuasive value.

The Board is guided by the principle that "'evidence of a party having the burden of proof may not be disbelieved without an explicit and objectively adequate reason.'" ***New Boston Garden v. Assessors of Boston,*** 383 Mass. 456, 473 (1981) (quoting L.L. JAFFE, JUDICIAL CONTROL OF ADMINISTRATIVE ACTION 607 (1968)). However, the Board has also ruled that the mere qualification of a person as an expert does not endow his testimony with any magic

qualities (***Boston Gas Co. v. Assessors of Boston,*** 334 Mass. at 579), particularly where the expert speaks to issues beyond his realm of expertise. *See, e.g.,* ***Khan and Zasky, Trustees v. Assessors of Brookline***, Mass. ATB Findings of Fact and Reports 2004-403, 435-6 (finding that, because the assessors' real estate valuation expert lacked the expertise to estimate certain development costs, his approach to valuing the property based on those costs lacked merit). In the instant appeal, the Presiding Commissioner found objective reasons for disregarding the value that the appellants' valuation expert derived for the subject property for the fiscal year at issue, namely, Mr. Houle's lack of expertise for offering costs and discounts for any issues affecting the potential for the subject property's development and the generic nature of his comparable-sales analysis. The Presiding Commissioner thus ruled that Mr. Houle's opinion of value lacked adequate foundation or persuasive value. Further, the Presiding Commissioner ruled that the assessors' evidence was credible and supported the subject assessment.

Accordingly, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of proving a fair market value lower than that assessed and decided this appeal for the appellee.

APPELLATE TAX BOARD

By: _____
James D. Rose, Commissioner

A true copy,

Attest: _____
Clerk of the Board