COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WYBEN HILLS NOMINEE TRUST KARA J. KETTLES, TRUSTEE	**v.**	**BOARD OF ASSESSORS OF THE CITY OF WESTFIELD**
Docket No. F307949		Promulgated: November 30, 2011

This is an appeal 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 City of Westfield (the "appellee" or the "assessors") to abate taxes on certain real estate in the City of Westfield owned by and assessed to the Wyben Hills Nominee Trust, Kara J. Kettles, Trustee, (the "appellant") under G.L. c. 59, §§ 11 and 38, for fiscal year 2010 (the "fiscal year at issue").

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

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

Kara J. Kettles and *Lou Kettles*, *pro se*, for the appellant.

James Pettingill, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2009, the appellant was the assessed owner of an improved parcel of real estate located at 382 Montgomery Road in the City of Westfield (the "subject property"). As of the January 1, 2009 assessment and valuation date for the fiscal year at issue, the subject property contained approximately 13.85 acres of land improved with a single-family dwelling and several outbuildings, yard improvements, and farm-related structures. The assessors classified, valued, and assessed twelve of the subject property's 13.85-acre parcel as agricultural or horticultural land under G.L. c. 61A ("Chapter 61A").

More specifically, the assessors classified seven of these twelve acres as agricultural land and the remaining five acres as horticultural land. They placed a fair cash value, under G.L. c. 59, §§ 2A and 38, and a Chapter 61A value, under G.L. c. 61A, §§ 4, 10, and 11, on the agricultural land of $18,200 and $805, respectively, and on the horticultural land of $13,000 and $540, respectively. The assessors considered the remaining 1.85 acres to be the subject property's homestead. They valued one acre of the homestead as the subject property's primary site at $110,600 and valued the remaining 0.85 acres as residual

land at $3,500. The assessors valued the subject property's dwelling, outbuildings, and yard improvements at $330,000 and two farm-related buildings, including a barn, at $13,100. The subject property's total assessment for the fiscal year at issue was $458,545.

The dwelling is a wood-framed, two-story, Colonial-style house, built around 1960, with approximately 2,616 square feet of finished living space.[1] It has eleven rooms, including four bedrooms, as well as three full bathrooms. The basement is partially finished, and there is a 24-foot-by-24-foot garage. The 1,308-square-foot attic is unfinished. On the main level, the floors are carpeted. The interior walls are drywall. For amenities, there is a chimney with three hearths, an open and an enclosed porch, an overhang, and central air-conditioning. The dwelling has a forced hot-air heating system fueled by oil. The exterior siding is stucco, and the roof is covered with slate tiles. The landscaping is mature and tasteful.

For the fiscal year at issue, the assessors valued the residential portion of the subject property at $444,100 and the farm-related buildings at $13,100 and assessed a tax thereon, at the rate of $14.68 per thousand, in the amount

[1] The appellant alleged that the dwelling was built in the style of a Modern/Contemporary home, as it had been assessed in previous fiscal years, and not a Colonial.

of $6,711.70. The assessors placed an assessed value on the agricultural and horticultural land portions of the subject property in the amount of $1,345 and assessed a tax thereon, at the commercial rate of $28.60 per thousand, in the amount of $38.47. Accordingly, the assessors assessed an aggregate tax on the subject property in the amount of $6,750.17, plus a Community Preservation Act ("CPA") assessment in the amount of $52.82, for a total tax of $6,802.99.

Jurisdiction

On or about December 31, 2009, Westfield's Collector of Taxes sent out the town's actual real estate tax notices. In accordance with G.L. c. 59, § 57C, the appellant paid the tax assessed on the subject property without incurring interest. On February 1, 2010, in accordance with G.L. c. 59, § 59, the appellant timely filed an Application for Abatement with the assessors. On February 10, 2010, the assessors denied the appellant's application, and on May 10, 2010, in accordance with G.L. c. 59, §§ 64 and 65, the appellant seasonably filed a Statement Under Informal Procedure with the Appellate Tax Board (the "Board").[2] On the basis of these facts, the

[2] Pursuant to G.L. c. 58A, § 7A and 831 CMR 1.09, the assessors timely elected to have this appeal heard under the formal procedure.

Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

Merits

On the Application for Abatement, Statement Under Informal Procedure, and at the hearing of this appeal, the appellant asserted that the assessors should have placed a total assessed value on the subject property of $388,000, not $458,545. The appellant admitted that in March 2008, only nine months before the relevant assessment and valuation date, the subject property was purchased for $499,900, with a view toward placing twelve acres of the subject property's parcel under the provisions of Chapter 61A. Nonetheless, the appellant argued that the subject property was overvalued because: the portion of the subject property's assessed value attributed to the dwelling was excessive compared to the assessed values attributed to other nearby dwellings and the assessed values attributed to other similar properties that had also been sold in Westfield during 2008; twelve acres of the subject property had been placed under Chapter 61A shortly after the sale; residential property values were declining in Westfield during the relevant time period; and the assessors had erroneously changed the style of the home on its property record card from "Contemporary/Modern" to "Colonial" and

had also erroneously changed the home's condition grade from "Average" to "Excellent."

The appellant testified in support of these assertions and also offered into evidence several exhibits, including: photographs of the subject property's dwelling; an analysis comparing the square footage and assessed values of purportedly comparable Colonial and Modern/Contemporary dwellings that had been sold in Westfield within the range of $400,000 to $500,000 in 2008; an analysis comparing the square footage and assessed values of purportedly comparable Colonial and Modern/Contemporary dwellings located within two miles of the subject property; and a statistical chart produced by The Warren Group,[3] which quantified the decline in the median sales price of homes in Westfield from January, 2008 to December, 2008 at approximately 8% and from January, 2009 to December, 2009 at approximately 11¼%.

While the assessors did not introduce any demonstrative evidence in defense of the assessment, except for the requisite jurisdictional information and the subject property's property record card, the city's administrative assessor, James Pettingill, testified that

[3] The Warren Group is the publisher of *Banker & Tradesman* and *The Commercial Record*; it also, among other things, provides real estate and financial information and analyses to subscribers.

the subject property's overall assessment was below the subject property's recent sale price even before placing part of the property under chapter 61A. Mr. Pettingill further related that, according to the assessors' data, more expensive properties in Westfield, like the subject property, had not declined in value as precipitously as the rate indicated by The Warren Group's report, and, at any rate, the assessors did take the declining market into account when placing the assessment on the subject property.

Mr. Pettingill also testified that the assessors took the style and condition of the property into account when they valued it, notwithstanding what may have been on the property record card with respect to those two factors. In addition, Mr. Pettingill maintained that the purportedly comparable properties' dwellings upon which the appellant relied in the appellant's comparable-assessment analyses were, for the most part, significantly larger than the subject property and were simply not comparable to it in other noteworthy ways, such as the number of rooms, the number of bathrooms, the locations, the degree of basement finish, and the presence of other amenities. In many cases, the purportedly comparable properties were located in areas and settings substantially different from the

subject property's location and more than five to eight miles away.

In consideration of all of the evidence, the Presiding Commissioner found that the appellant failed to demonstrate that the subject property was overvalued for the fiscal year at issue. In particular, the Presiding Commissioner found that the appellant did not sufficiently demonstrate that the purportedly comparable properties and dwellings upon which the appellant's comparable-assessment analyses relied were sufficiently comparable to the subject property. The Presiding Commissioner further found that the appellant's analyses did not include any adjustments to account for differences between the subject property and its dwelling as compared to the purportedly comparable properties and their dwellings. In addition, the Presiding Commissioner, cognizant of the familiar appraising principle that larger dwellings usually have lower values per square foot than smaller ones that are otherwise comparable, did not find the appellant's comparable-assessment analyses that compared the per-square-foot value of the subject property's dwelling to those of the purportedly comparable properties' dwellings to be persuasive.

The Presiding Commissioner also credited Mr. Pettingill's testimony that the assessors had appropriately considered the style and condition of the subject property and the degree of Westfield's declining market for more expensive properties when valuing the subject property for the fiscal year at issue. Moreover, the Presiding Commissioner determined that even by reducing the March, 2008 sale price of $499,900 to account for depreciating home values during the relevant time period and to then further reduce that value to account for twelve acres being placed under Chapter 61A and for possible mischaracterizations of the subject dwelling's style and condition, the disputed assessment was still lower than the adjusted sale price.

Finally, the Presiding Commissioner found that the appellant failed to show that the overall value of the subject property was lower than its overall assessed value for the fiscal year at issue.

On this basis, the Presiding Commissioner found that the appellant failed to meet the burden of establishing that the subject property was overvalued for the fiscal year at issue, and he, therefore, decided this appeal for the appellee.

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 preceding the start of the fiscal 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 burden of proof is upon the taxpayer to make out its right as a matter of law to abatement of the tax. ***Schlaiker v. Board of Assessors of Great Barrington***, 365 Mass. 243, 245 (1974). The taxpayer must show that the assessed valuation of the subject property was improper. *See* ***Foxboro Associates v. Board of Assessors of Foxborough***, 385 Mass. 679, 691 (1982). The assessment is presumed valid until the taxpayer sustains its burden of proving otherwise. ***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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984)(quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the present appeal, the appellant tried to show that the assessed value of the subject property exceeded its fair cash value by attacking the assessors' methodology and by introducing affirmative evidence of the subject property's value. The appellant asserted that the assessors had erroneously categorized the subject property as having a Colonial-style dwelling in excellent condition instead of a Modern/Contemporary-style dwelling in average condition. The Presiding Commissioner found, however, that Mr. Pettingill's testimony credibly rebutted those assertions, as did the Presiding Commissioner's own calculation, based on the evidence of record, comparing the assessment to the subject property's adjusted sale price.

With respect to the appellant's affirmative evidence of value, the Presiding Commissioner found that while an analysis of comparable properties' assessments may form the basis for an abatement, see G.L. c. 58A, § 12B[4] and

[4] General Laws chapter 58A, § 12B provides that: "At any hearing relative to the assessed fair cash valuation or classification of property, evidence as to the fair cash valuation or classification of property at which assessors have assessed other property of a comparable nature or class shall be admissible."

John Alden Sands v. Assessors of Bourne, Mass. ATB Findings of Fact and Reports 2007-1098, 1106-1107 ("The introduction of such evidence may provide adequate support for either the granting or denial of an abatement."), the appellant did not demonstrate that the purportedly comparable properties and dwellings upon which the appellant's comparable-assessment analyses relied were sufficiently comparable to the subject property. Even a cursory review of the properties' characteristics placed their comparability to the subject property in issue. *See, e.g.*, ***Hinds v. Assessors of Manchester-By-The-Sea***, Mass. ATB Findings of Fact and Reports 2006-771, 780 ("[T]he appellants' purportedly comparable properties were differently situated and so much larger than the appellants' property that their comparability was dubious.")(citing ***Narkiewich v. Assessors of Newbury***, Mass. ATB Findings of Fact and Reports 2006-354, 360-61).

Moreover, the Presiding Commissioner found that the appellant's analyses did not include any adjustments to account for differences between the subject property and its dwelling as compared to the purportedly comparable properties and their dwellings. "[R]eliance on unadjusted assessments of assertedly comparable properties . . . [is] insufficient to justify a value lower than that" assessed.

Antonio v. Assessors of Shutesbury, Mass. ATB Findings of Fact and Reports 2008-54, 70. Accordingly, the Presiding Commissioner found and ruled that, without the appropriate adjustments, the appellant's reliance on the assessed values of other properties in Westfield was not a persuasive indicator of the subject property's fair cash value.

In addition, the Presiding Commissioner, cognizant of the familiar appraising principle that larger dwellings usually have lower values per square foot than smaller ones that are otherwise comparable, *see* APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (13th ed. 2008) 212 ("Size differences can affect value . . . . Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase."), did not find the appellant's comparable-assessment analyses that compared the per-square-foot value of the subject property's dwelling to those of the purportedly comparable properties' dwellings to be persuasive. *See* ***Seto v. Assessors of Quincy***, Mass. ATB Findings of Fact and Reports 2006-585, 592 ("all other things being equal, smaller [] units ordinarily have a higher value per square foot than larger ones."); ***Finigan v. Assessors of Belmont***, Mass. ATB Findings of Fact and Reports 2004-533, 537 ("One cannot take a unit of value for

a given parcel and apply that unit value to increase the value of a larger parcel or decrease the value of a smaller one."). The purportedly comparable properties' dwellings upon which the appellant's comparable-assessment analyses relied were, for the most part, significantly larger than the subject property's dwelling. The appellant did not apply any adjustments to account for these meaningful size variations, and the evidence did not contain sufficient data upon which the Presiding Commissioner could rely to apply his own.

Finally, the Presiding Commissioner found and ruled that the appellant's evidence challenging the assessment placed on the subject property's dwelling did not address the efficacy of the assessment placed on the subject property as a whole. The Board has previously found and ruled that "a taxpayer does not conclusively establish a right to an abatement merely by showing that [a single component of the overall assessment] is overvalued. 'The tax on a parcel of land and the building thereon is one tax . . . although for statistical purposes they may be valued separately.'" ***Hinds***, Mass. ATB Findings of Fact and Reports, at 2006-778 (quoting ***Assessors of Brookline v. Prudential Insurance Co.***, 310 Mass. 300, 317 (1941)). The Presiding Commissioner found and ruled here that the

appellant's evidence, which challenged only the portion of the assessment applied to the dwelling, did not address or demonstrate "that the overall assessment of the subject property exceeded its fair cash value as of the relevant assessment date." ***Hinds***, Mass. ATB Findings of Fact and Reports at 2006-779.

Accordingly, the Presiding Commissioner ruled that the appellant failed to meet the burden of proving that the subject property was overvalued for the fiscal year at issue. On this basis, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By:_____
James D. Rose, Commissioner

A true copy,

Attest:_____
Clerk of the Board