

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

WILLIAM J. & MARY J. BURNS

v.

BOARD OF ASSESSORS OF
THE TOWN OF WESTPORT

Docket No. F314298

Promulgated:
June 18, 2012

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 Town of Westport (the "appellee" or the "assessors") to abate taxes on certain real estate in the Town of Westport owned by and assessed to William J. and Mary J. Burns (collectively, the "appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2011.

Commissioner Mulhern (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 appellants under G.L. c. 58A, § 13 and 831 CMR 1.32.

William J. Burns, pro se, for the appellants.

Ellis Withington, assistant assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Introduction and Jurisdiction

On January 1, 2010, the valuation and assessment date for fiscal year 2011, the fiscal year at issue in this appeal, the appellants were the assessed owners of a parcel of real estate, improved with a single-family dwelling, located at 907 Horseneck Road in Westport (the "subject property"). The subject property's parcel contains approximately 1.377 acres, and it is labeled for assessing purposes as Map 74, Lot 32A. The subject property is part of six contiguous lots of varying size that comprise the appellants' Horseneck Farms. Four of the six lots, totaling 17.81 acres, including about 40% of the subject property, are subject to a conservation restriction. For fiscal year 2011, the assessors valued the subject property at \$378,300 and assessed a tax thereon, at the rate of \$6.71 per thousand, in the amount of \$2,538.39, plus a Community Preservation Act surcharge of 2%. The assessors valued the land and building components of the subject property at \$283,600 and \$94,700, respectively.

On December 30, 2010, Westport's Collector of Taxes sent out the town's actual real estate tax notices. The appellants paid the tax late and incurred interest charges of \$12.24. However, because the total tax assessed on the subject property was \$3,000 or less, the appellants did not lose their right to

appeal the assessors' denial of their abatement application to the Appellate Tax Board (the "Board").¹ On February 1, 2011, in accordance with G.L. c. 59, § 59, the appellants timely filed with the assessors an Application for Abatement, which the assessors denied on April 28, 2011. The Board received the appellants' Petition Under Formal Procedure challenging the assessors' denial of their request for abatement on July 29, 2011, more than three months after the date that the assessors had denied the appellants' Application for Abatement. However, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably mailed their Petition Under Formal Procedure to the Board on or before July 28, 2011.² Accordingly, the Presiding Commissioner deemed the date of mailing to be the date that the appellants' Petition Under Formal Procedure was filed with the Board. On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction to hear and decide this appeal.

Description of the Subject Property

Based on the testimony and exhibits offered at the hearing of this appeal, the Board made the following findings of fact.

¹ Pursuant to G.L. c. 59, §§ 64 and 65, "if the tax due for the full fiscal year on a parcel of real estate is more than \$3,000, said tax shall not be abated unless the full amount of said tax due has been paid without the incurring of any interest charges on any part of said tax."

² Pursuant to G.L. c. 59, § 65, when a petition is received by the Board more than 3 months after an abatement application is denied or deemed to be denied, "the date of the . . . postmark . . . shall be deemed to be the date of delivery . . . to the board."

The subject property is composed of an approximately 1.377-acre, mostly rectangular parcel that is improved with a single-story, wood-framed dwelling. The subject property has approximately 196 feet of frontage along Horseneck Road, and about 40% of its parcel is subject to a "Conservation Restriction" that the appellants granted to the Trustees of Reservation in December, 2005 for \$500,000. The restriction encompasses approximately 17.81 acres and four of the six lots that together comprise the appellants' Horseneck Farms. The purpose of the restriction is to ensure that the affected portions of Horseneck Farms and the subject property's parcel are "retained in perpetuity predominantly in their natural, scenic, and open condition and available for agriculture, farming or forestry use and to prevent any use . . . that will significantly impair or interfere with [] conservation values."

The ranch-style, single-family, 1,224-square-foot dwelling was built in 1950 and is in average condition with an effective age of approximately 21 years. The dwelling contains a total of five rooms, including two bedrooms, as well as one full bathroom. The interior finishes include drywall and wall-to-wall carpeting.

The dwelling's exterior walls are finished with wood siding, and its gable roof is covered with asphalt shingles. The unfinished basement walls are concrete block, and the

basement floor is cement. The subject property has a forced hot water/vapor heating system, fueled by oil.

Valuation Evidence

At the hearing of this appeal, William J. Burns testified for the appellants. The appellants also introduced a number of exhibits including: a copy of a letter dated May 23, 2011 from the appellants to the town's selectmen; a map of Westport containing the appellants' notations; a packet of materials in support of their request for an abatement; a copy of a plan of land; a copy of a print-out of land sales in Westport occurring in 2009; a copy of a listing from MLS Property Information Network, Inc.; and a collection of photographs. The appellants contended that the subject property was overvalued primarily because the assessment had not adequately accounted for: (1) a conservation restriction affecting approximately 40% of the subject property's parcel; (2) several deficiencies in the subject property's dwelling; and (3) the presence of horse trailers across the street.

The appellants' packet of materials contained information on several assessments and sales of what they considered to be comparable properties. The appellants claimed that the assessments and sales of the purportedly comparable properties, along with the conservation easement affecting part of the subject property, demonstrated that the subject property's land-

component assessment should have been significantly lower. The appellants further claimed that the interior photographs of the subject property showed that the dwelling was deficient in certain respects and the mere presence of horse trailers across the street detracted from the subject property's overall appeal and value. Based on this information, the appellants estimated the value of the subject property at \$279,400, with the value of the parcel being \$206,800 and the value of the dwelling being \$72,600.

The appellants also alleged in their petition that the subject property was disproportionately assessed. They did not, however, submit the type and breadth of evidence at the hearing to support such a claim, and the Presiding Commissioner, therefore, considered that allegation waived.

In their case-in-chief, Ellis Withington, Westport's Assistant Assessor, testified for the assessors. The assessors also introduced into evidence the necessary jurisdictional documents, as well as the subject property's and two purportedly comparable parcels' property record cards. The assessors maintained that the subject property's assessed value sufficiently accounted for the conservation restriction affecting a portion of the subject property's parcel and any deficiencies in the dwelling. The assessors further maintained that three sales associated with the two purportedly comparable

parcels supported the increase in the subject property's land assessment. The first property, 0 Horseneck Road, sold in 2005 for \$250,000 and later in 2011 for \$285,000. This 1.37-acre property is comparable in size to the subject property, and it is located only one parcel away. The second property, 885 Horseneck Road, sold in August of 2008 for \$340,000. It is also located proximate to the subject property and is about 3 acres in size. According to the assessors, both of these properties also contain view easements and, like the subject property, are designated as neighborhood 8 properties.

With respect to the appellants' purportedly comparable-assessment properties, Mr. Withington testified that they are vastly different from the subject property in style, size of dwelling, and land area, and, to the extent that they might be considered comparable, they would require sizeable adjustments which the appellants did not make. With respect to the appellants' purportedly comparable-sale properties, Mr. Withington testified that they are in different, less desirable locations in Westport that do not share the quality of the subject property's neighborhood, setting, or amenities, such as open space, view vistas, and proximity to Horseneck Beach. Moreover, one of these properties contains over 63 acres compared to the subject property's 1.37-acre parcel.

Board's Valuation Findings

Based on all of the evidence, the Presiding Commissioner ultimately found that the appellants failed to prove that the subject property's assessed value exceeded its fair cash value for the fiscal year at issue. The Presiding Commissioner found that the appellants' purportedly comparable-sale properties were not comparable to the subject property because, as the assessors testified, they were either located miles away in a different and inferior location with none of the amenities available to the subject property or were more than sixty acres larger than the subject property. The Presiding Commissioner further found that the appellants' purportedly comparable-assessment properties were likewise not comparable to the subject properties because, as the assessors testified, they were dissimilar from the subject property in many respects and the appellants, as they had failed to do with respect to their purportedly comparable-sale properties, did not apply any adjustments to account for these properties' differences with the subject property.

In addition, the Presiding Commissioner found that, while the photographs introduced by the appellants did document some deficiencies in the subject property, the assessors credibly testified that these sub-standard features had been duly accounted for in the subject property's assessment for the

fiscal year at issue. The Presiding Commissioner also found that the appellants failed to establish how and to what extent the presence of some horse trailers on the opposite side of the street from the subject property affected the value of the subject property.

Furthermore, the Presiding Commissioner found that the three sales related to the two comparable-sale properties introduced by the assessors supported the land-component assessment and overall assessment placed on the subject property by the assessors for the fiscal year at issue. The Presiding Commissioner found that these properties were comparable to the subject property in most important respects, including being subject to a conservation restriction.

Accordingly, the Presiding Commissioner found that the appellants failed to meet their burden of establishing that the subject property was overvalued for the fiscal at issue. The Presiding Commissioner further found that the assessors demonstrated that the subject property's fair cash value was not less than its assessed value for the fiscal year at issue.

Therefore, the Presiding Commissioner decided this 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 at 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[s] to make out [their] 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 taxpayers . . . prov[e] 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, taxpayers "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 contended that the subject property was overvalued primarily because the assessment had not adequately accounted for: (1) a conservation restriction affecting approximately 40% of the subject property's parcel; (2) the inferior condition of the subject property's dwelling; and (3) the presence of horse trailers across the street.

The appellants' packet of materials contained information on several assessments and sales of what they considered to be comparable properties. The appellants claimed that the assessments and sales of the purportedly comparable properties, along with the conservation easement affecting part of the subject property, demonstrated that the subject property's land assessment should have been significantly lower. The appellants further claimed that the interior photographs of the subject property showed that the dwelling was in need of repair. The appellants also maintained that horse trailers parked across the street adversely impacted the value of the subject property. Based on these allegations, the appellants estimated the value of the subject property at \$279,400, with the value of the parcel being \$206,800 and the value of the dwelling being \$72,600.

With respect to the appellants' comparable-assessments and comparable-sales data, the Presiding Commissioner found that the appellants failed to establish the comparability of their

purportedly comparable properties to the subject property. While analyses of comparable properties' assessments and sales may form a basis for an abatement, see G.L. c. 58A, § 12B³ and **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 proponents need to establish initial comparability. APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 301 (13th ed. 2008) ("The goal is to find a set of comparable sales [or assessments] as similar as possible to the subject property to ensure they reflect the actions of similar buyers."). Moreover, the Presiding Commissioner found that the appellants' comparable-assessments and comparable-sales data did not include any adjustments to account for differences between the subject property's characteristics and those of the purportedly comparable properties. "[R]eliance on unadjusted assessments [or sales] 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. "The assessments in a comparable-assessments analysis, like the sales in a comparable-sales analysis, must also be adjusted to account for differences with

³ General Laws, c. 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."

the subject.” **Graham v. Assessors of West Tisbury**, Mass. ATB Findings of Fact and Reports 2007-321, 402, *aff’d*, 73 Mass. App. Ct. 1107 (2008). On these bases, the Presiding Commissioner found and ruled that the appellants’ comparable-assessments and comparable-sales data did not provide reliable indications of the subject property’s fair cash value for the fiscal year at issue.

In addition, the Presiding Commissioner found that, while the photographs introduced by the appellants did document some deficiencies in the subject property, the assessors credibly testified that these sub-standard features had been duly accounted for in the subject property’s assessment for the fiscal year at issue. See, e.g., **Miller v. Assessors of Sturbridge**, Mass. ATB Findings of Fact and Reports 2012-643, 652. The Presiding Commissioner also found that the appellants failed to establish how and to what extent the presence of some horse trailers on the opposite side of the street from the subject property affected the value of the subject property, if at all.

In defense of the assessment, the assessors credibly and successfully rebutted the appellants’ evidence and introduced two comparable-sale properties, which had sold three times over the past several years, that substantiated the subject property’s land-component assessment and overall assessment.

"[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. Assessors of Foxborough**, 385 Mass. 679, 682 (1982). Sales of comparable realty in the same geographic area and within a reasonable time of the assessment dates contain credible data and information for determining the value of the property at issue. **McCabe v. Chelsea**, 265 Mass. 494, 496 (1929). On this basis, the Presiding Commissioner found and ruled that the comparable-sale properties introduced by the assessors provided credible data that supported the subject property's assessed value.

To obtain relief on the basis of disproportionate assessment, taxpayers must show "that there existed an intentional policy or scheme . . . of valuing properties or classes of property at a lower percentage of fair cash value than that percentage in fact applied to the taxpayer[s'] own property." **Shoppers' World, Inc. v. Assessors of Framingham**, 348 Mass. 366, 377 (1965). "If the taxpayer[s] can demonstrate in an appeal to the board that [they] have been [] victim[s] of a scheme of discriminatory, disproportionate assessment, [they] 'may be granted an abatement . . . which will make . . . [their] assessment proportional to other assessments, on a basis which reaches results as close as is practicable to those which would

have followed application by the assessors of the proper statutory assessment principles.'" **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 838 (1975) (quoting **Shoppers' World, Inc.**, 348 Mass. at 377-78). **First Natl. Stores, Inc. v. Assessors of Somerville**, 358 Mass. 554, 559 (1971). The burden of proof as to the existence of a "scheme of discriminatory, disproportionate assessment" is on the taxpayers. **Id.** at 559. "If the taxpayer[s] establish[] improper assessment of such number of . . . properties (at less than fair cash value and on a basis discriminating against the taxpayers) as to support an inference that there was a scheme of . . . [improper discriminatory] assessment, then the assessors will have the burden of going forward to show that there has been no scheme of discriminatory assessment.'" **Coomey**, 367 Mass. at 838 (quoting **Shoppers' World, Inc.**, 348 Mass. at 377). In the present appeal, the record is devoid of evidence to support an assertion that the assessors engaged in an intentional scheme of discriminatory, disproportionate assessment, and the Presiding Commissioner accordingly deemed as waived the appellants' empty allegation of disproportionate assessment.

The board [is] not required to believe the testimony of any particular witness but it [can] accept such portions of the evidence as appear to have the more convincing weight. **Assessors of Quincy v. Boston Consolidated 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). Based on all of the evidence presented in this appeal and his subsidiary findings and rulings, the Presiding Commissioner ultimately found and ruled that the appellants failed to prove that the subject property's assessed value exceeded its fair cash value.

Accordingly, the Presiding Commissioner decided this appeal for the appellee.

APPELLATE TAX BOARD

By: _____
Thomas J. Mulhern, Commissioner

A true copy,

Attest: _____
Clerk of the Board