COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

SHERWOOD GUERNSEY, II and CAROL GUERNSEY	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF WILLIAMSTOWN**
Docket No. F266829		Promulgated: March 2, 2006

This is an appeal under the formal procedure, pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes on certain real estate in the Town of Williamstown owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2003.

Commissioner Egan heard this appeal. She was joined in the decision for the appellee by Commissioners Scharaffa and Gorton.

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.

Sherwood Guernsey, II, *pro se*, for the appellants.

William Barkin, assessor, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2002, Sherwood Guernsey, II and his spouse, Carol Guernsey (together, “appellants”), were the assessed owners of a parcel of real estate located at 402 Hancock Road in the Town of Williamstown ("subject property"). The parcel contains approximately 5.3 acres of land and is improved with a single-family home. For fiscal year 2003, the Board of Assessors of Williamstown ("assessors") valued the subject property at $525,000 and assessed a tax thereon, at the rate of $13.14 per thousand, in the amount of $7,251.69.[1] The assessors valued the land and building components of the property at $323,000 and $202,200, respectively.[2]

On September 16, 2002, Williamstown's Collector of Taxes sent out the town's actual real estate tax notices. In accordance with G.L. c. 59, § 57, the appellants paid the tax without incurring interest. On November 1, 2002, the appellants timely filed their application for abatement with the assessors.[3] On November 20, 2002, the assessors denied the appellants' application, and on February 19, 2003, the appellants seasonably filed their petition with the Appellate Tax Board ("Board") alleging that the subject property had a fair cash value of

[1] The total amount of taxes here includes both real estate and fire district taxes.

[2] When adding the land and building components to reach a total assessment of $525,000 for the subject property for fiscal year 2003, the assessors apparently rounded off $200 from the $202,200 value, which they had attributed to the building components.

[3] General Laws c. 59, § 59 requires that applications for abatement be filed: "[O]n 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, § 57, the applicable payment section for this appeal, the last day for payment is November 1st. Accordingly, the Board found that the appellants timely filed their application for abatement on November 1, 2002.

$425,000.[4] On the basis of these facts, the Board found that it had jurisdiction to hear and decide this appeal.

At the hearing of this appeal, the appellants argued that the subject property must be overvalued because the fiscal year 2003 assessment represented an eighty-four percent increase ($240,000) over the prior fiscal year's assessment. In particular, the appellants asserted that for fiscal year 2003 the assessors had placed too high a value on the land portion of their assessment, while appropriately valuing the improvements, including the house, that were located on the subject property. The appellants attempted to prove their contention of overvaluation through the testimony of one of the owners of the subject property, Sherwood Guernsey, II. They also introduced into evidence, without objection from the assessors, a packet of information prepared by Mr. Guernsey which included a memorandum of the owners' arguments, property record cards for the subject property and other properties that the appellants considered relevant to their appeal, results from a percolation test conducted on the subject property on November 20, 2002, and a letter from a real estate broker asserting that the increase in the subject property's assessment from fiscal year 2002 to

[4] The appellants originally filed an informal petition with the Board. Subsequently, on March 18, 2003, the assessors elected to transfer this appeal to the formal docket. Pursuant to G.L. c. 58A, § 7A, the assessors "within 30 days of the date of service of the [petition], may elect to have the appeal heard under the formal procedure."

fiscal year 2003 was inequitable when compared to the increases of other nearby properties. The assessors presented their case-in-chief through the testimony and comparable-sales analysis of William Barkin, a member of the assessors, as well as the introduction into evidence of their own maps, photographs, property record cards, and the most recent deeds to the subject property and other properties that the assessors considered comparable to the subject property. This evidence revealed the following.

The dwelling located on the subject property is a 1.5-story, single-family home with gables, and approximately 2,486 square feet of finished space. The house was built around 1750 and most recently remodeled in 1985. It contains seven rooms, including three bedrooms, plus one one-half and two full bathrooms. The house also has a covered porch, a wood deck, and a fireplace. The house’s exterior siding is clapboard, and the roof is covered in asphalt shingles. The assessors considered the house to be in average condition. In addition to the dwelling, the subject property contained, as of the January 1, 2002 assessment date, two barns, two sheds, and another miscellaneous out-building. At all relevant times, breathtaking panoramic views of the rural countryside and mountains were readily visible from the house located on the subject property. According to the property record card and consistent with local zoning regulations, as of the January 1, 2002 assessment date, the subject property contained, in addition to its 2.5 acre primary lot and some excess land, a 2.5 acre secondary lot of adequate size and street frontage to support the construction of another home. The views from this lot were nearly as spectacular as those from the primary lot.

To prove that their land was overvalued by approximately $100,000, thereby rendering the overall assessment similarly excessive, the appellants primarily relied on the difference between the fiscal year 2002 and fiscal year 2003 land assessments for the subject property and other properties located near the subject property. According to the appellants and property record cards that they introduced into evidence, the land assessments for these neighboring properties did not increase in value from fiscal year 2002 to fiscal year 2003 nearly as much as the land assessment for the subject property. Moreover, according to a letter from a local real estate broker, which the appellants entered into evidence at the hearing of this appeal, the significant increase in the subject property's land assessment from fiscal year 2002 to fiscal year 2003 seemed inequitable compared to the incremental increases associated with other nearby properties. Finally, the appellants argued that the so-called "buildable" secondary lot, which comprised part of their total acreage, had failed an "unofficial" percolation test, thereby suggesting that this portion of the subject property was not suitable for, and should not be assessed as, a potential house lot.

The assessors' only witness was William Barkin. Mr. Barkin explained that the primary reason the subject property's assessment had increased so dramatically from fiscal year 2002 to fiscal year 2003 was the assessors' previous failure to consider the magnitude of the subject property's view. He testified that other Hancock Road properties' land assessment increases from fiscal year 2002 to fiscal year 2003 were merely incremental when compared to the subject property's increase because their views had already been accounted for in their fiscal year 2002 assessments. Before setting the assessments for fiscal year 2003, Mr. Barkin testified that the assessors had inspected the exteriors and views associated with all of the properties, including the subject property, on Hancock Road. On this basis and after comparing the subject property's view to the other Hancock Road properties' views, the assessors upwardly adjusted the subject property's view factor from essentially indistinct to the highest on the street. Photographs introduced into evidence at the hearing of this appeal depicted the subject property as having more spectacular panoramic views of the rural countryside and mountains than other nearby or comparable properties.

In addition, the assessors introduced the deeds and property record cards of several properties in Williamstown that the assessors deemed reasonably comparable to the subject property. These properties sold in 2002 for prices ranging from $469,000 to $630,000 with an average sale price of almost $550,000. While Mr. Barkin did not consider any of these properties' views to be commensurate with the subject property's view, he did consider their sale prices to be supportive of the subject property's assessment.

The assessors also introduced information pertaining to two 2002 sales of unimproved land in Williamstown. The assessors considered the views associated with these two properties to be reasonably comparable to the subject property's view. Both of these unimproved properties were located near the subject property and had only one 2.5 acre building lot along with varying amounts of excess land. Both of these properties sold for $300,000.

After considering all of the evidence, the Board found that the increase in the subject property's land assessment from fiscal year 2002 to fiscal year 2003 was appropriate given the assessors' failure to properly rate the subject property's view factor for fiscal year 2002. This failure caused the assessors to undervalue the land portion of the assessment, as well as the overall assessment for that fiscal year. The Board also found that the subject property’s fiscal year 2003 land assessment was supported by the unimproved land sales of comparable properties introduced into evidence by the assessors. The Board further found that the percolation test associated with the subject property’s so-called “buildable” secondary lot was admittedly “unofficial” and administered on only one date. Accordingly, the Board found that the percolation test did not rule out the secondary lot’s viability as a building lot.

Most importantly, the Board found that the comparable sale properties that the assessors introduced into evidence at the hearing of this appeal supported the subject property’s overall assessment for fiscal year 2003. The Board found that, under the circumstances present in this appeal and for the Board’s purpose of finding the subject property’s fair cash value, as long as the subject property’s overall assessment comported with its fair cash value, the assessments that the assessors ascribed to the various components of the subject property were essentially irrelevant. The Board found that the subject property’s dramatic increase in its land assessment from fiscal year 2002 to fiscal year 2003, compared to other nearby properties’ incremental increases, was credibly explained by the assessors. Further, the Board found that neither the subject property’s land nor, most importantly, its overall assessment was overvalued for fiscal year 2003. Finally, the Board gave little weight to the appellants’ real estate broker’s letter which asserted that the increase in the subject property’s assessment from fiscal year 2002 to fiscal year 2003 was not warranted because it substantially exceeded other nearby properties’ increases.

Based on these findings, the Board found that the appellants failed to meet their burden of proving that the subject property was overvalued for the fiscal year at issue. The Board, therefore, 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 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 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) ("***Schlaiker***") (quoting ***Judson Freight Forwarding Co. v. Commonwealth***, 242 Mass. 47, 55 (1922)). "[T]he [B]oard 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) ("***General Electric Co.***") (quoting ***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.***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). In the present appeal, the appellants focused primarily on perceived errors in the assessors' separate valuation of the land component associated with the subject property.

A taxpayer, however, does not conclusively establish a right to abatement merely by showing that his land 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." ***Assessors of Brookline v. Prudential Insurance Co.,*** 310 Mass. 300, 316-17 (1941). In abatement proceedings, the question is whether the assessment for the parcel of real estate, including both the land and the structures thereon, is excessive. The component parts, on which that single assessment is laid, are each open to inquiry and revision by the appellate tribunal in reaching the conclusion whether that single assessment is excessive. ***Massachusetts General Hospital v. Belmont,*** 238 Mass. 396, 402-403 (1921). *See also* ***Buckley v. Assessors of Duxbury,*** ATB Findings of Fact and Reports 1990-110, 119; ***Jernegan v. Assessors of Duxbury,*** ATB Findings of Fact and Reports 1990-39, 48-9; ***Everhart v. Assessors of Dalton,*** ATB Findings of Fact and Reports 1985 (Docket No. 132237, February 26, 1985).

In the present appeal, the appellants challenged the value of the land component of the subject assessment to show that the overall assessment exceeded its fair cash value. The Board found and ruled that the evidence presented failed to establish that the land and overall assessments for the subject property were excessive. The Board also found and ruled that the eighty-four percent increase in the subject property's assessment from fiscal year 2002 to fiscal year 2003 was appropriate given the assessors' significant underrating of the subject property's view factor for fiscal year 2002. The assessors' new rating for fiscal year 2003 was corroborated by photographs depicting the views from the subject property as well as those from nearby or comparable properties.

The fair cash value of property may be determined by recent sales of comparable properties in the market. Actual sales generally "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); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 469 (1981); ***First National Stores, Inc. v. Assessors of Somerville***, 358 Mass. 554, 560 (1971). In the present appeal, the Board found and ruled that both the unimproved and improved comparable-sale properties relied upon by the assessors were sufficiently similar to the subject property to support the subject property's assessment for fiscal year 2003. The Board also found and ruled that the appellants' real estate broker's letter, which asserted that the increase in the subject property's assessment from fiscal year 2002 to fiscal year 2003 was not warranted because it substantially exceeded other nearby properties' increases, was, under the circumstances, entitled to little weight.

Based on the evidence presented and its subsidiary findings, the Board found and ruled that the appellants failed to meet their burden of proving that the subject property's land and overall assessments were excessive. The Board further found and ruled that, taken as a whole, the evidence presented, as well as its subsidiary findings, supported the fiscal year 2003 assessment.

On this basis, the Board decided this appeal for the appellee.

APPELLATE TAX BOARD

By: ______________________________

Anne T. Foley, Chairman

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Frank J. Scharaffa, Commissioner

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Donald E. Gorton, III, Commissioner

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Nancy T. Egan, Commissioner

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James D. Rose, Commissioner

A true copy,

Attest: ______________________________

Assistant Clerk of the Board