

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

THORNDIKE PROPERTIES OF
MASSACHUSETTS II, LLC

v.

BOARD OF ASSESSORS OF
THE TOWN OF PLYMOUTH

Docket Nos. F269585-F269593

Promulgated:
February 27, 2006

These are appeals filed under the formal procedure for fiscal year 2003 pursuant to G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes assessed on real estate located in the Town of Plymouth owned by and assessed to Thorndike Properties of Massachusetts II, LLC under G.L. c. 59, §§ 11 and 38.

Commissioner Gorton ("Presiding Commissioner") heard the appeals and, pursuant to G.L. c. 58A, § 1A, issued single-member decisions for the appellant.

These findings of fact and report are promulgated at the request of the appellee pursuant to G.L. c. 58A, § 13 and 831 CMR 1.32.

Abbott L. Reichlin, Esq. for the appellant.

Catherine M. Salmon, Assessor, for the appellee.

FINDINGS OF FACT AND REPORT

Based on evidence and testimony offered at the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2002, Thorndike Properties of Massachusetts II, LLC ("appellant") was the assessed owner of nine parcels of real estate located in the Town of Plymouth ("subject lots"). For fiscal year 2003 ("fiscal year at issue"), the Board of Assessors of the Town of Plymouth ("assessors") valued the parcels and assessed taxes, at the rate of \$12.30 per thousand, as follows.

| Docket Number | Location | Assessed Value | Taxes Assessed |
|----------------------|-----------------|-----------------------|-----------------------|
| F269585 | 9 Hawks Perch | \$214,100 | \$2,633.43 |
| F269586 | 11 Hawks Perch | \$215,100 | \$2,645.73 |
| F269587 | 15 Hawks Perch | \$295,200 | \$3,630.96 |
| F269588 | 17 Hawks Perch | \$213,500 | \$2,626.05 |
| F269589 | 19 Hawks Perch | \$241,400 | \$2,969.22 |
| F269590 | 21 Hawks Perch | \$212,200 | \$2,610.06 |
| F269591 | 23 Hawks Perch | \$213,800 | \$2,629.74 |
| F269592 | 25 Hawks Perch | \$214,700 | \$2,640.81 |
| F269593 | 27 Hawks Perch | \$212,900 | \$2,618.67 |

The appellant paid the taxes due without incurring interest. On January 31, 2003, the appellant timely filed nine applications for abatement with the assessors which were denied on April 1, 2003. On June 3, 2003, the appellant seasonably filed nine appeals with the Board.

Based on these facts, the Board found that it had jurisdiction over these appeals.

The appellant presented its case through the testimony of Mr. Lloyd Geisinger, manager for the appellant. The subject lots, located in the "Hawks Perch" neighborhood of the Pinehills Development ("Pinehills"), are vacant buildable lots, fully-improved with roads and infrastructure to the lot lines. Pinehills is a 3,000-acre planned community, approximately two thirds of which will remain open space. The development offers miles of walking trails, both paved and unpaved, its own 350-acre nature preserve, cranberry bogs, and at least two championship golf courses. At full build-out, Pinehills will have 2,800 homes, a commercial center, apartments, condominiums, and a hotel.

The residential part of the project consists of several neighborhoods, each of which is assigned to a specific builder and each of which fits a different "niche" in terms of type, size, and sale price of home. As a result, Mr. Geisinger testified, there were low-end and high-end neighborhoods. He then suggested that an example of a high-end neighborhood is "Chipping Hill." Mr. Geisinger noted that while the appellant is restricted

to building on the subject lots "production" homes with between 1800 and 2400 square feet of living space, the builder in "Chipping Hill" must build custom made homes ranging in size from 2500 to 3300 square feet of living space. The result, he opined, is that the ultimate sale prices would be greater and, consequently, the developer would be willing to pay more for the buildable lots in that neighborhood.

The appellant contracted with Pinehills "master" developer, Pinehills LLC, for the right to purchase one hundred fifty lots in installments of nine to ten lots. The subject lots were the first group purchased under the contract. On October 13, 2001, the appellant purchased the subject lots for an initial aggregate price of \$675,000 (\$75,000 per lot). Mr. Geisinger testified that at the time of the negotiations with Pinehills LLC, there was a disagreement as to the value of the lots. He further testified that to overcome this hurdle, the appellant agreed to pay a "minimum value for the lots" and also agreed to make "back-end payments" based on the ultimate sale prices of the homes. It is the sale price recited on the deed that the appellant primarily relied for its contention that the subject lots were overvalued.

The assessors offered the testimony and report of Catherine Salmon, Assessor for the Town of Plymouth. The assessors first argued that the sale of the subject lots, which included a provision that "back-end payments" be made by the appellant to Pinehills LLC at the time of the final sale of the homes, was not an arm's-length transaction and, therefore, that the \$675,000 purchase price recited in the deed was not reflective of the subject lots' full fair market value.

In support of the assessments, the assessors offered into evidence a land-sale analysis of thirteen vacant buildable lots located in other neighborhoods in Pinehills. Based on the listed sales, the assessors argued that lots in "Pine Cobble" had a sale price range of \$220,000 to \$250,000, and lots in "Chipping Hill" had a sale price range of \$245,000 to \$300,000. On cross-examination, however, Ms. Salmon conceded that of the thirteen cited sales, only two were located in the "Pine Cobble" neighborhood. She also acknowledged that the lot sizes of properties in "Chipping Hill" are two to three times larger than the lots in "Hawks Perch," yet she made no adjustments to the properties' sale prices to account for the size differences.

The assessors also offered into evidence a residual land-value analysis. Using the lots' ultimate sale prices, once built upon, less the applicable building cost estimate, the assessors calculated residual land values for the subject lots that ranged from \$250,000 to \$341,000. Acknowledging that the sales of the finished homes occurred after the relevant date of assessment, and to account for appreciation in value, Ms. Salmon made a fifteen-percent downward adjustment to arrive at residual land values that ranged from \$212,500 to 303,500.

On the basis of the evidence presented, the presiding Commissioner found that the actual sale price of the subject lots included a future payment, amount unknown, based on the ultimate sale price of the completed homes. Under the circumstances, the Presiding Commissioner found that although the October 13, 2001 sale of the subject lots may have been an arms'-length transaction, the sale price of the subject lots as recited in the deed was not indicative of their fair cash values.

The Presiding Commissioner further found that the lots in "Chipping Hills," used in the assessors' land-sale analysis, were substantially larger than the subject lots, yet Ms. Salmon made no adjustments in her calculations to account for these differences. Furthermore, the Presiding

Commissioner found that "Chipping Hill," which would have custom made homes that were considerably larger than the subject lots' neighborhood of "Hawks Perch," was a more desirable neighborhood. The Presiding Commissioner found that in her analysis, Ms. Salmon failed to take this factor into consideration. Consequently, the Presiding Commissioner found that the subject lots were overvalued for the fiscal year at issue and reduced each of the subject lots' assessed value by approximately fifteen percent.

Accordingly, the Presiding Commissioner issued decisions for the appellant and granted abatements as follows.

| Docket No. | Location | Assessed Value | Fair Market Value | Abated Value | Abatement |
|------------|----------------|----------------|-------------------|--------------|-----------|
| F269585 | 9 Hawks Perch | \$214,100 | \$182,000 | \$32,100 | \$394.83 |
| F269586 | 11 Hawks Perch | \$215,100 | \$182,000 | \$32,300 | \$397.29 |
| F269587 | 15 Hawks Perch | \$295,200 | \$250,900 | \$44,300 | \$544.89 |
| F269588 | 17 Hawks Perch | \$213,500 | \$181,500 | \$32,000 | \$393.60 |
| F269589 | 19 Hawks Perch | \$241,400 | \$205,200 | \$36,200 | \$445.26 |
| F269590 | 21 Hawks Perch | \$212,200 | \$180,400 | \$31,800 | \$391.14 |
| F269591 | 23 Hawks Perch | \$213,800 | \$181,800 | \$32,000 | \$393.60 |
| F269592 | 25 Hawks Perch | \$214,700 | \$182,500 | \$32,200 | \$396.06 |
| F269593 | 27 Hawks Perch | \$212,900 | \$181,000 | \$31,900 | \$392.37 |

OPINION

The assessors have the statutory and constitutional obligation to assess all real property at its full and fair cash value. Part 2, C. one, section one, article 4, of the

Constitution of the Commonwealth; Article 10 of the Declaration of Rights; General Laws chapter 59 sections 38, 52. See **Coomey v. Assessors of Sandwich**, 367 Mass. 836, 837 (1975). Fair cash value is defined as the price on which a willing seller and a willing buyer will agree if both of them are fully informed and under no compulsion. **Boston Gas Company v. Assessors of Boston**, 334 Mass. 549, 566 (1956).

The Board is entitled to presume that the assessment is valid until the taxpayer sustains its burden of proving otherwise. **Schlaiker v. Board of Assessors of Great Barrington**, 365 Mass. 243, 245 (1974). Accordingly, the burden of proof is upon the taxpayer to make out its right as a matter of law to an abatement of the tax. *Id.* The taxpayer must demonstrate that the assessed valuation of its property was improper. See **Foxborough Associates v. Board of Assessors of Foxborough**, 385 Mass. 679, 691 (1982) ("**Foxborough Associates**").

A taxpayer must prove that the assessed valuation of its property was improper. See **Foxboro Associates**, 385 Mass. at 691. 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 appeals, the appellant argued that the \$675,000 sale price recited in the deed was the subject lots' fair cash value. The Presiding Commissioner, however, found that the sale price of the subject lots, which included a "back-end payment" to be made in the future based on the ultimate sale price of the home, had yet to be determined. Accordingly, the Presiding Commissioner found that the subject lots' sale price recited in the deed was not indicative of their fair cash value and that the appellant had not met its burden of showing that the October 13, 2001 sale price reflected the fair cash value of the subject lots on January 1, 2002.

The Presiding Commissioner further found that the lots in "Chipping Hill," used in the assessors' analysis, were two to three times larger than the subject lots. Also, the Presiding Commissioner found that the "Chipping Hill" lots were located in a more desirable neighborhood than the subject lots. Despite these differences, Ms. Salmon made no adjustments in her land-sale analysis. Accordingly, after taking the size and location factors into

consideration, the Presiding Commissioner reduced the subject lots' fair market values by approximately fifteen percent of the assessed values and granted abatements accordingly.

THE APPELLATE TAX BOARD

By: _____
Donald E. Gorton, III, Commissioner

A true copy,

Attest: _____
Assistant Clerk of the Board