

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

HENRY F. KABAT and  
MARGARET MULLINS

v.

BOARD OF ASSESSORS OF  
THE TOWN OF CUMMINGTON

Docket No. F287312

Promulgated:  
April 2, 2008

This is an appeal filed under the formal procedure, pursuant to G.L. c. 58A, § 7 and G.L. c. 59, §§ 64 and 65, from the refusal of the appellee to abate taxes assessed on real estate located at 35 Powell Road in the Town of Cummington, owned by and assessed to the appellants under G.L. c. 59, §§ 11 and 38, for fiscal year 2006.

Commissioner Mulhern ("Presiding Commissioner") heard this appeal, and, in accordance with G.L. c. 58A, § 1A and 831 CMR 1.30, issued a single-member decision for the appellants.

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.

*Mark A. Tanner, Esq.,* for the appellants.

*Karen Tonelli,* assessor, for the appellee.

## FINDINGS OF FACT AND REPORT

On January 1, 2005, the relevant assessment date for fiscal year 2006 ("fiscal year at issue"), Henry F. Kabat and Margaret Mullins ("appellants") were the assessed owners of a 28.50-acre parcel of real estate and structures located at 35 Powell Road in the Town of Cummington ("subject property"). The subject property is located in an area of Cummington that is zoned Rural/Residential and is a mix of open land and single-family dwellings.

The subject property is level to rolling in contour, with some wooded areas. It is situated near the intersection of Powell Road and West Cummington Road. Located on the subject property are a 35-by-8 foot trailer on a hitch, a storage garage, a pole barn, and a shed.

For the fiscal year at issue, the Cummington Board of Assessors ("assessors") valued the subject property at \$120,400 broken down as follows: land value, \$71,700; trailer value, \$31,500; storage garage, \$12,200; pole barn, \$4,500; and the shed, \$500. The assessors assessed a tax, at the rate of \$11.64 per thousand, in the amount of \$1,401.46, which the appellants timely paid without incurring interest. Appellants timely filed an Application for Abatement with the assessors on

February 9, 2006.<sup>1</sup> On April 4, 2006, the assessors denied the appellants' application and on June 29, 2006, the appellants seasonably appealed the denial to the Appellate Tax Board ("Board"). On the basis of these facts, the Presiding Commissioner found and ruled that the Board had jurisdiction over this appeal.

Appellants contended that the land, trailer, storage garage, pole barn and shed were overvalued.<sup>2</sup> They further contended that the trailer was a registered vehicle, not real estate, and as such was not subject to real estate taxation. Given the nature of the improvements, both parties treated the land portion of the subject property as a discrete unimproved parcel, as opposed to one of several components comprising an improved parcel. Under the circumstances present in this appeal, the Board found that this approach was appropriate.

In support of their claim that the land was overvalued, appellants introduced an appraisal report prepared by Cindy Higginbotham ("the appraiser") of

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<sup>1</sup> The appellants' abatement application was received by the assessors on Tuesday, February 14, 2006, one day after the due date. However, pursuant to G.L. c. 59, § 59, the application is deemed to be filed on the date of the postmark affixed on the envelope in which the application was mailed to the assessors, in this case, February 9, 2006.

<sup>2</sup> Given the nature of the improvements, both parties treated the land portion of the subject property as a discrete, unimproved parcel, as opposed to one of several components comprising an improved parcel. Under the circumstances present in this appeal, the Board found that this approach was appropriate.

Northampton Appraisal Services. According to the report, the appraiser performed her appraisal utilizing a sales-comparison approach. The appraiser compared three land sales: one in Cummington and two in the neighboring town of Ashfield. The sale prices ranged from \$40,000 to \$123,000 with acreage ranging from as small as 9 acres to as large as 114 acres. The sales occurred between December 2004 and August 2005. Based on these sales, the appraiser concluded that the value of the subject property's land was \$65,000.

In support of their valuation of the land portion of the subject property, the assessors presented evidence, including deeds and maps, of Cummington land sales that occurred between January 6, 2005 and September 7, 2006. Three sales of note were: a 9.45-acre parcel of land on Pleasant and Trouble Streets, which sold on September 7, 2005 for \$92,000; a 3.946-acre parcel of land on Harlow Road, which sold on July 5, 2006 for \$87,000; and a 4.769-acre parcel of land on Cole Street which sold on September 7, 2006 for \$66,500.

After considering all of the evidence, the Presiding Commissioner gave little weight to the sales approach offered by the appellants. Despite the existence of sales of proximate comparable lots, as evidenced by the assessors' analysis, the appellants relied on only three

sales, two of which were outside the town. Accordingly, the Presiding Commissioner found that the appellants did not meet their burden of proving that the land was overvalued.

With regard to the assessors' classification of the trailer as real estate, appellants argued that because it was registered as a motor vehicle in the nearby city of Northhampton, the trailer was not subject to real estate taxation. They further claimed that the small size of the trailer and the fact that it was on a trailer hitch was further evidence that it was moveable, and, therefore, personal property. However, the Presiding Commissioner found that the trailer had been on the site for several years and had been utilized by appellants as temporary housing. Further, the Presiding Commissioner found and ruled, for the reasons detailed in the following Opinion, that the ability to move the trailer from the site did not mean that it could not be taxed as real estate. Therefore, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of demonstrating that the trailer was not subject to real estate taxation.

As to the valuation of the trailer, appellants produced a title and sales slip indicating that they purchased the trailer in 1986 for \$8,000. The appellants

further argued that this type of trailer depreciates in value over time. Appellants offered into evidence listings of comparable used trailers, which indicated that a comparable trailer and hitch could be purchased for far less than the assessed value. The Presiding Commissioner found that the appellants were knowledgeable about and familiar with the value of their trailer and agreed with the appellants' contention that the trailer had depreciated in value since its purchase in 1986. Based on the above facts, the Presiding Commissioner found and ruled that the appellants met their burden of proving that the trailer was overvalued and that the fair cash value of the trailer as of January 1, 2005 was \$5,000.

With respect to the valuation of the storage garage and pole barn, the appellants did not provide any evidence to support their claim of overvaluation. In contrast, to support their assessment of these structures and the shed, the assessors offered the town's cost manual, which contained values for similar buildings in similar conditions. Because appellants offered no evidence of the value of the storage garage and pole barn and the assessors' evidence supported the assessments attributed to these structures, the Presiding Commissioner found and ruled that the appellants failed to meet their burden of

proving that the storage garage and pole barn were overvalued.

However, as to the matter of the shed, the Presiding Commissioner examined several photographs of the structure offered into evidence. The photographs showed the shed in extreme disrepair and in a highly dilapidated condition. Based on these photographs, the Presiding Commissioner found and ruled that the shed contributed nothing to the value of the property and was effectively worthless. Accordingly, the Presiding Commissioner found and ruled the appellants met their burden of proving that the shed was overvalued by the entirety of its assessed \$500 value.

On the basis of these facts, the Presiding Commissioner found and ruled that the appellants met their burden of proving that the subject property was overvalued in the amount of \$27,000.<sup>3</sup>

#### OPINION

"All property, real and personal, situated within the commonwealth . . . shall be subject to taxation." G.L. c. 59, § 2. Pursuant to G.L. c. 59, § 2A, "[r]eal

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<sup>3</sup> Due to a typographical error, the original Decision in this appeal showed an overvaluation of \$27,400 and an abatement of \$318.94. A revised Decision, issued contemporaneously with these findings of fact and report, shows the correct overvaluation of \$27,000 and abatement in the amount of \$314.28.

property for the purpose of taxation shall include all land within the commonwealth and ***all buildings and other things thereon or affixed thereto***, unless otherwise exempted from taxation under other provisions of the law" (emphasis added). The plain language of § 2A(a) "does not require the Structures to be affixed to the subject property for them to be classified as taxable real property." ***Hasco Associates v. Assessors of Wareham***, Mass. ATB Finds of Fact and Report 2000-178, 183. "The use of "or" provides an alternative: the Structures could be "affixed" to the site, but they also could merely be 'thereon.'" ***Id.***

It is "well settled that land and buildings erected thereon or affixed thereto are properly taxed as a unit and this rule is not affected by private agreements or by the degree of physical attachment to the land." ***Ellis v. Assessors of Achushnet***, 358 Mass. 473, 475 (1970) (ruling that mobile home properly taxable as real estate); *see also Franklin v. Metcalfe*, 307 Mass. 386, 388-89 (ruling that lunch cart standing "on its own wheels on abutments which are four cement poles" is taxable as real estate even though the cart could be "removed at any time" from the land). Accordingly, the Board ruled here that the appellants' trailer located on their land was properly taxable as real estate.



Regarding the appellants' overvaluation claims, "[t]he 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 [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) (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)). When evaluating this evidence, "[the Board can] accept such portions of the evidence as appear to have the more convincing weight. The market value of the property [can] not be proved with mathematical certainty and must ultimately rest in the realm of opinion, estimate, and judgment . . . . The board [can] select the various elements of value as shown by the

record and from them form . . . its own independent judgment." *Assessors of Quincy v. Boston Consolidated Gas Company*, 309 Mass. 60, 72 (1941). See also *North American Philips Lighting Corp. v. Assessors of Lynn*, 392 Mass. 296, 300 (1984); *New Boston Garden*, 383 Mass. 456, 473 (1981); *Jordan Marsh Co. v. Assessors of Malden*, 359 Mass. 106, 110 (1971).

In the present appeal, while the appellants' appraiser valued the land at less than the assessors, her sales comparison approach included only three sales, two of which were outside the town of Cummington. The Presiding Commissioner found that this analysis was insufficient to rebut the presumably valid assessment, especially in light of the sales data that the assessors provided in support of the subject valuation.

With regard to the trailer, however, the Presiding Commissioner found that the appellants produced reliable evidence of overvaluation, including: their payment of only \$8,000 in 1986 for the trailer; credible testimony that the trailer is an asset which depreciates over time; and credible testimony concerning the value of comparable used trailers available on the market. Based on this evidence, the Presiding Commissioner found and ruled that the fair

cash value of the trailer as of the relevant assessment date was \$5,000, far less than the \$31,500 assessment.

The Presiding Commissioner further found and ruled that the appellants did not meet their burden of proving that the storage garage and pole barn were overvalued, especially in light of the town manual, which supported the assessors' valuation. However, based on the photographs offered into evidence by the appellants, the Presiding Commissioner found and ruled that the shed, valued by the assessors at \$500, was in such deplorable condition that it had no value and contributed nothing to the value of the subject property.

On this basis, the Presiding Commissioner found and ruled that the appellants met their burden of proving that the assessed value of the subject property for the fiscal year at issue exceeded its fair cash value by \$27,000. Accordingly, the Presiding Commissioner issued a decision for the appellants in this appeal.

**APPELLATE TAX BOARD**

By: \_\_\_\_\_  
Thomas J. Mulhern, Commissioner

A true copy,

Attest: \_\_\_\_\_  
Clerk of the Board