

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

HAROLD and DIANE MALLOY

v.

BOARD OF ASSESSORS OF
THE TOWN OF SAVOY

Docket Nos. F331903
F331906

Promulgated:
July 3, 2020

These are appeals 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 Savoy ("assessors" or "appellee") to abate taxes on real estate located in the Town of Savoy owned by and assessed to Harold and Diane Malloy ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2016 (fiscal year at issue").

Commissioner Elliott ("Presiding Commissioner") heard these appeals under G.L. c. 58A, § 1A and 831 CMR 1.20, and issued a single-member decision for the appellants.

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

Edmund R. St. John III, Esq. for the appellants.

Julie Pavia, chair of the assessors, *Brenda Smith*, member of the assessors, and *Robin Wadsworth*, tax consultant, for the appellee.

FINDINGS OF FACT AND REPORT

On January 1, 2015, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of two contiguous vacant parcels of real estate - one located on Harwood Road ("Harwood Road parcel") and the other on Barnard Road ("Barnard Road parcel") (collectively "subject properties") - in the Town of Savoy. For fiscal year 2016, the assessors valued the subject properties at \$149,700 and \$93,200, respectively, and assessed a tax thereon, at a rate of \$16.20 per \$1,000, in the amounts of \$2,425.15 and 1,509.84, respectively. On or about February 10, 2016, Savoy's Collector of Taxes sent out the town's actual real estate tax bills. Although the appellants did not pay the assessed taxes timely, the incurring of interest was not a jurisdictional bar because the tax amounts were below the statutory threshold under G.L. c. 59, §§ 64 and 65.

On March 8, 2016, in accordance with G.L. c. 59, § 59, the appellants timely filed abatement applications with the assessors, which the assessors denied on June 8, 2016. On September 8, 2016, in accordance with G.L. c. 59, §§ 64 and 65, the appellants seasonably filed their Petitions Under Formal Procedure with the Appellate Tax Board ("Board"). On this basis, the Presiding Commissioner found and ruled that the Board had jurisdiction over these appeals.

The appellants challenged the assessments on the subject properties on the grounds of overvaluation and incorrect classification. They argued that the subject properties were unbuildable and not available for further logging or development for wind turbines, and therefore should be classified as primarily forest and wetlands. The appellants further contended that the division of one parcel, which had been assessed for \$88,800 in fiscal year 2015, into the two subject properties with a combined valuation of \$242,900, was unjustified.

The appellants presented their case to the Board through the testimony of Harold Malloy and the introduction of several exhibits, including: a copy of a site map of the subject properties; a copy of the fiscal year 2015 real estate tax bill for the subject properties showing the subject properties assessed as one parcel; a letter to Mr. Malloy from the Massachusetts Department of Environmental Protection ("MassDEP") regarding clear-cutting on the Harwood Parcel, with attached Administrative Consent Order with Penalty (the "ACOP") effective February 6, 2014 attached; and pictures of the Harwood and Barnard Road parcels.

The assessors countered the appellants' overvaluation and incorrect classification allegations by arguing that the appellants failed to prove their contentions and maintaining

that the subject properties were developable as evidenced by a lease to a wind turbine farm developer and a special permit issued by Savoy's Zoning Board of Appeals (the "Savoy ZBA"). At any rate, the assessors were willing to reduce the assessments for the fiscal year at issue and recombine the subject properties as one assessment parcel starting in fiscal year 2019.

The assessors called three witnesses to testify: Brenda Smith, a member of the assessors; Julie Pavia, the chair of the assessors; and Robin Wadsworth, the town's tax consultant. The assessors had also viewed the subject properties in connection with their evaluation of the appellants' requests for abatement, and, without objection, introduced a number of exhibits, including: copies of the requisite jurisdictional documents; copies of the assessors' settlement offers to the appellants; a Google Earth printout of the subject properties; and an informational packet. The informational packet contained: a copy of a topographical map pertaining to the subject properties; copies of town meeting minutes and votes on certain articles; a copy of a special permit for a wind turbine project on the subject properties issued by the Savoy ZBA; a copy of the Savoy ZBA's extension of the special permit; copies of a recorded notice of lease pertaining to the subject properties and the wind turbine

project plus several amendments that ultimately extended the terms of lease to 2015; copies of a 2005 commercial mortgage, security agreement, and assignment of leases and rents pertaining to the subject properties; copies of the assessors' offer to negotiate settlements of the appellants' abatement applications; and a copy of an email from the appellants' then-attorney rejecting the settlement offer.

In consideration of all the evidence and reasonable inferences drawn therefrom, the Presiding Commissioner made the following findings of fact.

The appellants purchased the Harwood Road parcel, which consists of approximately 193.346 acres of vacant land with 1,851.65 feet of frontage¹ in 1999 for \$71,000. The parcel contains some steep slopes, wetlands, and ledge. The record does not delineate exactly how much of each. According to the ACOP, several years prior to the valuation and assessment date here, the appellants had clear-cut a portion of this parcel at its summit purportedly to return the area to agricultural uses and a possible house site. At all relevant times, this parcel was not classified as forest land under Chapter 61.² Following their view, the assessors confirmed that a fifty-percent reduction for topography in what they

¹ Savoy's zoning requires 150 feet of frontage for development.

² See special assessment chapter - G.L. c. 61 - for the classification and taxation of forest land and forest products.

considered to be a three-acre prime building site was appropriate, and that the remaining acreage should be discounted by seventy percent. The assessors valued the 190.346 acres of excess land according to their land schedule - averaging \$614 per acre - and then agreed that this value should be reduced by twenty percent to account for topography. On this basis, the assessors recommended reducing the Harwood Road parcel's assessment of \$149,700 to \$114,300, a \$35,400 decrease.

The Barnard Road parcel consists of approximately 100 acres of land with 1,811.41 feet of frontage on a road that the town is not currently maintaining and is chained off. At all relevant times, this parcel was not classified as forest land under Chapter 61. Following their view, the assessors confirmed that a fifty-percent reduction for topography in what they considered to be a three-acre prime building site was also appropriate, and that the remaining acreage should be discounted by seventy percent. The assessors valued the ninety-seven acres of excess land according to their land schedule - averaging \$655 per acre - and then agreed that this value, like the one for the Harwood Road parcel, should be reduced by twenty percent to account for topography. On this basis, the assessors recommended reducing the Barnard

Road parcel's \$93,200 assessment to \$69,400, a \$23,800 decrease.

On the basis of all the evidence, the Presiding Commissioner found the subject properties were overvalued. The Presiding Commissioner accepted many of the assessors' recommendations as the best evidence of value. Although the appellants failed to delineate wetlands and ledge and failed to provide a mechanism or even amount to account for the subject properties' topographical issues, the assessors did provide a reasonable roadmap. However, the Presiding Commissioner found that at all relevant times, neither the Barnard Road parcel nor the Harwood Road parcel were buildable parcels. The Presiding Commissioner found that the conditions in the ACOP so limited and restricted the use of the Harwood parcel that development in the foreseeable future was very unlikely. The Presiding Commissioner further found that the Barnard Road parcel did not possess the required frontage on a useable road. Moreover, the Presiding Commissioner found that the lease of the subject properties to the wind turbine developer expired in 2015, and the terms of the special permit issued by the Savoy ZBA were too restrictive for the wind turbine developer/lessee to develop and maintain a wind turbine farm on the subject properties in a cost-effective manner.

The Presiding Commissioner, therefore, valued each parcel without a three-acre prime building site, instead using the excess-acre land-value averages provided by the assessors for all the acreage. The Presiding Commissioner further reduced the Harwood Road parcel by another approximately seventeen percent for topography. In this way, the Presiding Commissioner valued the Harwood Road parcel at \$98,600 and the Barnard Road parcel at \$65,000.

The Presiding Commissioner thus decided these appeals for the appellants and granted real estate tax abatements in the amounts of \$827.82 for the Harwood Road parcel (Docket No. 331903) and \$456.84 for the Barnard Road parcel (Docket No. 331906).

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 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 subject properties have 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 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 [Presiding Commissioner] is entitled to 'presume that the valuation made by the assessors [is] valid unless the taxpayers . . . [sustain] the burden of proving 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 these appeals, the Presiding Commissioner found and ruled that the appellants met their burden of demonstrating that the subject properties were overvalued for the fiscal year at issue by showing that the assessors had erroneously considered the subject properties to be buildable or available for continued logging or as a viable situs for a wind turbine farm.

On this basis, the Presiding Commissioner determined that the assessments on the Harwood Road parcel and the Barnard Road parcel should be reduced to \$98,600 and \$65,000, respectively.

"The [Presiding Commissioner is] not required to believe the testimony of any particular witness but [may] accept such portions of the evidence as appeared to have the more convincing weight. *Assessors of Quincy v. Boston Consol. 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 [Presiding Commissioner]."
Cummington School of the Arts, Inc. v. Assessors of Cummington, 373 Mass. 597, 605 (1977). "The market value of the property c[an] not be proved with mathematical certainty

and must ultimately rest in the realm of opinion, estimate, and judgment . . . The [Presiding Commissioner may] select the various elements of value as shown by the record and from them form . . . [his] own independent judgment." ***Boston Consol. Gas Co.***, 309 Mass. at 72 (citations omitted). See also ***North American Philips Lighting Corp. v. Assessors of Lynn***, 392 Mass. 296, 300 (1984); ***New Boston Garden Corp. v. Assessors of Boston***, 383 Mass. 456, 473 (1981); ***Jordan Marsh Co. v. Assessors of Malden***, 359 Mass. 106, 110 (1971). "The [Presiding Commissioner] is not required to specify the exact manner [through] which [his fair cash value] was arrived at." ***Jordan March Co.***, 359 Mass. at 110. Based on the evidence presented in this appeal, the Presiding Commissioner selected the most credible and probative evidence and exercised his independent judgment in finding and ruling that the subject properties were overvalued by the assessors for the fiscal year at issue.

On this basis, the Presiding Commissioner found and ruled that the fair cash values of the Harwood Road parcel and the Barnard Road parcel for the fiscal year at issue were \$98,600 and \$65,000, respectively, and he, therefore, decided these appeals for the appellants and granted real estate tax abatements in the respective amounts of \$827.82 and \$456.84.

THE APPELLATE TAX BOARD

By: /s/ Steven G. Elliott
Steven G. Elliott, Commissioner

A true copy,

Attest: /s/ William J. Doherty
Clerk of the Board