COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

ALAN SLISKI	**v.**	**BOARD OF ASSESSORS OF THE TOWN OF LINCOLN**

Docket Nos. F337262, F337263
F339604, F339605

Promulgated:
June 5, 2024

These are appeals 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 Board of Assessors of the Town of Lincoln ("appellee" or "assessors") to abate taxes on two parcels of real estate owned by and assessed to Alan Sliski ("appellant" or "Mr. Sliski") and Susan Sliski for fiscal years 2019 and 2020 ("fiscal years at issue").

Chairman DeFrancisco heard these appeals. He was joined by Commissioners Good, Elliott, and Metzer in the decisions for the appellee.

These findings of fact and report are made pursuant to a request by the appellant under G.L. c. 58A, § 13 and 831 CMR 1.32.[1]

Alan Sliski, pro se, for the appellant.

Harald Scheid, Assessor, for the appellee.

[1] This citation is to the regulation in effect prior to January 5, 2024.

FINDINGS OF FACT AND REPORT

Based on testimony and documents admitted into evidence during the hearing of these appeals, the Appellate Tax Board ("Board") made the following findings of fact.

On January 1, 2018, and January 1, 2019, the relevant assessment and valuation dates for the fiscal years at issue, the appellant was the assessed owner of a 4.665-acre improved parcel of land located at 273 Concord Road ("subject residential property") and the adjacent 0.05-acre parcel of land located at 0 Concord Road ("subject excess property") in Lincoln (together, "subject properties"). Relevant jurisdictional information for these appeals is summarized in the following charts.

273 Concord Road

	Assessed value	**Taxes timely paid Y/N**	**Abatement application filed**	**Abatement application denied**	**Petition to the Board**
FY2019	Residential $697,900 Agricultural $ 449 Total $698,349	Y	10/30/2018	01/07/2019	01/31/2019
FY2020	Residential $730,000 Agricultural $ 449 Total $730,449	Y	10/23/2019	12/09/2019	01/23/2020

0 Concord Road

	Assessed value	Taxes timely Paid Y/N	Abatement application filed	Abatement application denied	Petition to the Board
FY2019	$ 900	Y	10/30/2018	01/07/2019	01/31/2019
FY2020	$ 1,500	Y	10/23/2019	12/09/2019	01/23/2020

Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeals.

273 Concord Road consists of an improved 0.125-acre "prime site" assessed and taxed as residential property as well as a 3.54-acre productive woodland and pasture lot that is assessed and taxed under G.L. c. 61A as agricultural land and a 1-acre unbuildable lot that is also assessed and taxed as agricultural land. The prime site is improved with a single-family deckhouse built in 1986 ("subject home"). The subject home contains 2,650 square feet of living area and is comprised of eight rooms, including four bedrooms, as well as two and one-half bathrooms, and an additional 1,271 square feet of basement living area. The kitchen and bathrooms are indicated to be in average condition according to the property record card. The subject residential property is also improved with a barn and a shed.

0 Concord Road is a triangle-shaped tract of land; one side fronts Concord Road/Route 126, another side abuts the subject residential property, and the third side follows the Wayland town

line. 0 Concord Road is assessed and taxed as undevelopable residential land.

The appellant presented his case through his testimony and the submission of documents that were admitted into evidence.

The appellant raised preliminary issues that were not concerned with the valuation of the subject properties. He first contended that the Board denied him due process of law by not posting notice to the public of the hearing of these appeals, as he claimed was required under the Open Meeting Law set forth in G.L. c. 30A, §§ 18 to 25 ("Open Meeting Law"). First, the Board could identify no due process violation, as the appellant identified no potential or actual harm attendant to his appeals. The Board provided both parties with notice of the hearing of the appeals,[2] and both parties had ample opportunity to prepare their cases. Thus, the appellant was fully able to participate in and advance his appeals.

The Open Meeting Law requires that all "meetings" of a "public body" be conducted in an open session, with some exceptions. G.L. c. 30A, §§ 20(a), 21(a). General Laws c. 30A, §18 defines a "meeting" to be a "deliberation" by a public body with respect to any matter within the body's jurisdiction. A "deliberation" under

[2] The Board's Rules of Practice and Procedure, at 831 CMR 1.19(2), in effect during the relevant time of these appeals, require the Clerk of the Board to furnish notice of hearing dates to the parties and their representatives. The current version of this rule is 831 CMR 1.23(2).

§18 is an oral or written "communication . . . between or among a quorum of a public body."

A Board hearing, including the hearing relating to the instant appeals, is presided over by a single member of the Board who hears evidence offered by the two parties, a taxpayer and a representative of a municipal or state taxing authority. There is no communication between or among Board members during a hearing. Thus, the hearing is not "between or among a quorum of a public body," and does not constitute a "deliberation" that satisfies the definition of a meeting under the Open Meeting Law. In turn, the notice requirements of the Open Meeting Law do not apply to the Board's hearings.

Given the lack of a discernible due process issue, and that the hearing of these appeals was presided over by a single Board member, the Board ruled that the appellant's Open Meeting Law argument was unavailing.

The appellant further contended that the Board denied him due process of law by combining his appeals of both the fiscal year 2019 and 2020 assessments on the subject properties into one hearing, thereby eliminating the possibility that the appellant might benefit from G.L. c. 58A, § 12A ("Section 12A"). Under Section 12A, if an assessment contested at the Board exceeds the Board's prior determination of that property's fair cash value for either of the two immediately preceding fiscal years, then the

burden shifts to the assessors to prove that the increase in assessed value was warranted. However, as discussed below, the Board considered the appellant's claim for fiscal year 2019 and found that the appellant failed to meet his burden of demonstrating entitlement to an abatement. Thus, the burden shift in Section 12A would not apply to a fiscal year 2020 appeal, because the Board made no determination of value for fiscal year 2019. This result would come to be whether the appeals were considered together or separately. Therefore, the appellant's argument, based on a theoretical construct that was not based on fact, had no merit.

The appellant next contended that Harald Scheid ("Mr. Scheid") was not qualified to represent the appellee in these appeals because he was not a member of the appellee, as the appellant claims was required by the Board's Rules at 831 CMR 1.01.[3] In response, Mr. Scheid verified that he is the Principal Assessor for the Town of Lincoln, a position that he has held for approximately sixteen years. Accordingly, the Board found and ruled that Mr. Scheid could appear on behalf of the assessors.

The appellant next advanced a series of arguments criticizing the methods by which the assessors classified or valued the subject properties.

[3] As in effect at the hearing of these appeals, this regulation provided that "[p]ersons may appear and act for themselves, or for partnerships of which they are members, or for corporations of which they are officers, or for boards of which they are members, in any proceeding before the Board."

273 Concord Road

The appellant noted that the map and lot designations on the property record cards for the fiscal years at issue have changed from previous fiscal years' identifications. He questioned whether the property record cards for the fiscal years at issue, which listed Map 177, Lot 61, Sub Lot 0, were referring to the subject residential property. In response, Mr. Scheid credibly explained that the Town of Lincoln had restructured the mapping of its land about seven or eight years prior, which resulted in new map designations. Mr. Scheid also credibly testified that Map 177, Lot 61, Sub Lot 0 referred to 273 Concord Road for the fiscal years at issue. Moreover, the property record card listed the property's address as 273 Concord Road. The Board thus found and ruled that the claimed inconsistencies did not exist.

The appellant next contended that the assessors erroneously categorized 5,445 square feet of the subject residential property as prime site rather than property used in agriculture pursuant to G.L. c. 61A. He argued that this portion of the subject residential property, which surrounded the subject home, could not be prime site because it was not within "the first 80,000 square feet" of land as measured from the street frontage, as he claimed is required by the assessors' procedures. The appellant further reasoned that the subject home was built after the subject residential property had been converted to agricultural land, and

he argued that the land could not be re-converted to residential prime-site property, even upon improving the site. The appellant did not advance any legal support for this assertion.

Alternatively, the appellant claimed that the prime site should not be measured at 5,445 square feet but instead at 2,594 square feet, the portion of property that the appellant claims to lie directly under the foundation of the subject home's basement. Upon questioning, the appellant conceded that he did not apply to the assessors to have the prime site, either wholly or in part, classified as agricultural land for the fiscal years at issue.

The appellant next contended that the use of a "land-curve factor" of 9 to value the 5,445-square-foot prime site impermissibly inflated its value. He argued that the factor of 9 is arbitrary and not based on an analysis of actual sales in town. He further contended that the land curve prevented the subject residential property from achieving the tax benefits intended by Chapter 61A. The appellant referred to ***Sliski v. Bd. of Assessors of Lincoln***, 89 Mass. App. Ct. 1107 (2016) (Unpublished Opinion pursuant to Rule 1:28), an appeal of a prior Board decision wherein the Appeals Court remanded the appeal to the Board for a determination of these same questions. The appellant offered no additional evidence on this issue for the fiscal years at issue.

The appellant next contended that the assessments of the subject residential property did not properly account for

wetlands. The appellant admitted that accounting specifically for wetlands would not change the valuations of the subject residential property for the fiscal years at issue. Instead, the appellant is concerned with a hypothetical tax penalty in the future: "it may not change the taxation for this particular year, but when and if I have to pay rollback taxes, they would be improperly computed if the wetlands are not properly accounted for on the property record card." The Board ruled that this argument did not relate to the contested issue before it, namely the valuation of the subject properties on the relevant assessment dates. Consequently, the Board made no further findings or rulings with respect to this issue.

The appellant offered no recent sales of similar properties in the vicinity or other evidence to establish that the subject properties were assessed for more than their fair cash values. Rather, he testified: "I'm not here saying my neighbor's house isn't worth as much as mine. That's not it at all." Instead, "[t]he root of my problem, the reoccurring need is that the numbers are inexplicable." The appellant claimed the right to know how the figures on the property record cards are calculated and to be able to "reproduce the calculations."

In the end, the appellant contested only the assessed value of the subject residential property's prime site, not the valuation of the subject home or yard items or any other components. As such,

the appellant stated that his opinion of value for the subject residential property for the fiscal years at issue could be calculated by applying $3,750 as the value of the prime site for each fiscal year. His opinions of value for the subject residential property were thus: $401,199 for fiscal year 2019, and $422,999 for fiscal year 2020.

0 Concord Road

The appellant claimed that the size of the subject excess property as listed on the property record card has fluctuated during the years as he has owned it. The property record cards for the subject excess property cited land areas of 0.029 acres for fiscal year 2019, and 0.05 acres for fiscal year 2020. The appellant admitted into evidence the deed for his purchase of the subject excess property, listing the land area at "2,368 +/- square feet," or 0.05 acres. The appellant contended that the assessors have changed the subject excess property's land area without the authority to do so, and that the Board should abate taxes with interest for all years that the assessors used the wrong land area to calculate the assessed taxes on the subject excess property.

The appellant further contended, without evidence, that the subject excess property's unit valuation rate of $30,000 per acre is arbitrary and not based on actual sales. The appellant also claimed that the subject excess property is assigned an incorrect neighborhood code on the property record card. The appellant's

valuation evidence for 0 Concord Road consisted of the deed for his purchase of the property for $100 in October of 2000.

The appellee cross examined the appellant, whereupon, as previously explained, the appellant conceded that he did not apply to the assessors to have the prime site classified as agricultural land for the fiscal years at issue. The appellee then rested on the validity of the assessments of the subject properties.

Based on the evidence of record, the Board found that the appellant failed to advance any evidence to prove that the assessed values at issue exceeded the fair cash values of the subject properties. Moreover, as previously explained, the appellant did not apply to the assessors for any part of the 273 Concord Road prime site to be classified under G.L. c. 61A. As will be explained in the Opinion below, the Board has no jurisdiction to rule on a classification issue where the appellant has not first applied to the assessors pursuant to G.L. c. 61A, § 6.

With respect to the appellant's contentions that the land curve of 9 was arbitrary and impermissibly undermined the tax benefit of G.L. c. 61A for the subject residential property as a whole, the Board addressed these issues in the reinstated Decision of ***Sliski v. Assessors of Lincoln***, Mass. ATB Decision with Findings (Docket No. 306087, February 7, 2017). That appeal involved this same parcel of property and the same appellant who raised this identical issue. As will be further explained in the Opinion below,

the burden is on the appellant to prove that the assessors' use of a land-curve factor of 9 in valuing the subject residential property was improper. The appellant advanced no new evidence on these issues for the fiscal years at issue and the Board again rejected the appellant's contention.

The Board next found that the assessors did not overstate the size of 0 Concord Road for the fiscal years at issue. The Board found credible the appellant's evidence, consisting of the deed for his purchase of the subject excess property, and thus found that the subject excess property was comprised of 0.05 acres. For the fiscal years at issue, the assessors calculated the subject excess property as either smaller than or equal to the actual size of the subject excess property. Further, as discussed more fully in the Opinion below, the Board lacked jurisdiction in these appeals to consider whether the assessors may have overvalued the subject excess property in prior fiscal years.

Finally, the appellant advanced no evidence to meet his burden of proving that any alleged errors in valuation rate or neighborhood code resulted in the subject excess property being assessed for more than its fair cash value for the fiscal years at issue.

Accordingly, the Board issued decisions for the appellee in these appeals.

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 will agree if both are fully informed and under no compulsion. ***Boston Gas Co. v. Assessors of Boston***, 334 Mass. 549, 566 (1956).

In appeals before the 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. v. Assessors of Lynn***, 393 Mass. 591, 600 (1984) (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)). The appellant has the burden of proving that a 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) (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.***, 393 Mass. at 598 (quoting ***Schlaiker***, 365 Mass. at 245).

While the Board has the authority to review "component parts" of an assessment, the review must be related to determining whether

the assessment reflects fair cash value. *See* ***Massachusetts General Hospital v. Belmont***, 238 Mass. 396, 403 (1921)("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***.")(emphasis added). The Board does not have unlimited jurisdiction to decide any issue conceivable in a property tax appeal. "An administrative agency has no inherent or common law authority to do anything. An administrative board may act only to the extent that it has express or implied statutory authority to do so." ***Comm'r of Revenue v. Marr Scaffolding Co.***, 414 Mass. 489, 493 (1993). The Board has only that jurisdiction conferred on it by statute. ***Stilson v. Assessors of Gloucester***, 385 Mass. 724, 732 (1982). The boundaries of the Board's jurisdiction are prescribed by G.L. c. 58A, § 6. *See* ***Space Bldg. Corp. v. Commissioner of Revenue***, 413 Mass. 445, 449 (1992).

True to his admission that he was not disputing the subject properties' valuation vis-à-vis neighboring properties, several of the appellant's claims have nothing to do with valuation and in fact relate to issues beyond the Board's statutorily granted authority. First, the Board lacks jurisdiction under the facts of these appeals to determine whether all or a portion of the subject residential property's prime site should have been valued as agricultural land. The appellant did not apply to the assessors

for agricultural classification of the 5,445 square feet of prime-site land, as is required pursuant to G.L. c. 61A, § 6.[4] The Board cannot make an independent determination of a land's eligibility for agricultural classification, as this would circumvent the classification procedure set forth in statute.

Further, the appellant cannot satisfy his burden of proving overvaluation by raising theoretical issues that fail to identify an actual controversy surrounding the valuation of the subject properties for the fiscal years at issue, including whether the appellant was denied due process rights for fiscal year 2020 when the Board combined the appeals for both fiscal years,[5] or whether wetlands were properly characterized for hypothetical application of future rollback taxes. The appellant did not prevail in the fiscal year 2019 appeals, and rollback taxes were not applied during the fiscal years at issue, and therefore, these issues are moot. *See, e.g.*, ***Cognition Fin. Corp. v. Comm'r of Revenue***, 95 Mass. App. Ct. 1119 (2019)(Unpublished Opinion pursuant to Rule 1:28)(affirming dismissal of an appeal where "the disagreement here is purely hypothetical," and therefore the plaintiff failed to state an actual controversy).

[4] "Eligibility of land for valuation, assessment and taxation pursuant to section four shall be determined separately for each year. Application therefore shall be submitted to the board of assessors of each city or town in which such land is situated not later than October first of the year preceding each tax year for which such valuation, assessment and taxation are being sought." G.L. c. 61A, § 6, as in effect for the fiscal years at issue.
[5] *See* G.L. c. 58A, § 12A.

Finally, the Board has no jurisdiction to determine whether the assessors may have overvalued 0 Concord Road in years prior to the fiscal years at issue, because the appellant did not file abatement applications pertaining to this issue for those tax years. The timely filing of an abatement application with the assessors is required for the Board's jurisdiction over an appeal. ***New Bedford Gas & Edison Light Co. v. Assessors of Dartmouth***, 368 Mass. 745, 747 (1975) ("Adherence to the schedule of application incorporated in G.L. c. 59, § 59, is an essential prerequisite to effective application for abatement of taxes and to prosecution of appeal from refusals to abate taxes."). Therefore, "there can be no appeal to the board on the merits after the right to apply to the assessors for abatement has been lost through failure to follow statutory procedures." ***Id***. at 748.

As he argued in a previous appeal to the Board, the appellant challenged the assessors' application of a land curve of 9 to the subject residential property's prime site. Upon remand previously ordered by the Appeals Court in ***Sliski v. Assessors of Lincoln***, 89 Mass. App. Ct. 1107 (2016)(Unpublished Opinion pursuant to Rule 1:28), the Board found and ruled that the land curve of 9 was a uniform procedure that the assessors consistently applied to parcels like the subject residential property with prime sites between 1,000 and 6,000 square feet in size. The Board therefore further found and ruled that, as applied to the subject residential

property, this land curve takes into consideration the well-established valuation principle that increases in size result in diminishing unit values. ***Sliski v. Assessors of Lincoln***, Mass. ATB Decision with Findings (Docket No. 306087, February 7, 2017)(citing ***Boquist v. Assessors of Lincoln***, Mass. ATB Findings of Fact and Reports 2014-704)(finding that the use of graduated factors in assessing prime sites is an appropriate valuation method); *see also* Appraisal Institute, THE APPRAISAL OF REAL ESTATE 172 (15th ed. 2020)("Generally, as size increases, unit prices decrease. Conversely, as size decreases, unit prices increase.").

As in his prior appeal, the appellant here failed to meet his burden of proving that the land curve as applied to the subject residential property impermissibly frustrated the purpose and effect of G.L. c. 61A. The appellant advanced no evidence in the instant appeal to support his claim. Therefore, as it did when rejecting his argument relating to the land curve raised and decided in a prior appeal before the Board involving the same two parties and the same property, the Board found and ruled that, in the absence of any new evidence, the appellant failed to meet his burden of proving that the application of the land curve factor of 9 to the subject residential property was improper.

The appellant also offered no valuation evidence relating to his contentions that the alleged errors in the valuation-per-acre rate or neighborhood code resulted in 0 Concord Road being assessed

for more than its fair cash value for the fiscal years at issue. The Board thus found and ruled that the record was void of evidence indicating that 0 Concord Road was assessed for more than its fair cash value for the fiscal years at issue.

Based on the foregoing, the Board found that the appellant failed to meet his burden of proving that the subject properties were overvalued for the fiscal years at issue.

Accordingly, the Board decided these appeals for the appellee upholding the assessments at issue.

THE APPELLATE TAX BOARD

By: _____
Mark J. DeFrancisco, Chairman

A true copy,

Attest: _____
Clerk of the Board