

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

**CHRISTOPHER A. UHRICH &
JULIE A. BROGAN**

v.

**BOARD OF ASSESSORS OF
THE TOWN OF WAYLAND**

Docket No. F338010

Promulgated:
September 12, 2022

This is an appeal originally filed under the Informal Procedure¹ pursuant to G.L. c. 58A, § 7A and G.L. c. 59, §§ 64 and 65 from the refusal of the Board of Assessors of the Town of Wayland ("appellee" or "assessors") to abate a tax on a certain parcel of real estate located in Wayland, owned by and assessed to Christopher A. Uhrich and Julie A. Brogan ("appellants") under G.L. c. 59, §§ 11 and 38, for fiscal year 2019 ("fiscal year at issue").

Chairman DeFrancisco heard this appeal. He was joined by former Chairman Hammond and Commissioners Good and Metzger in the 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.

Christopher A. Uhrich and Julie A. Brogan, pro se, for the appellants.

Christina S. Marshall, Esq. and Annie E. Lee, Esq. for the appellee.

¹ Within thirty days of service of the Statement Under Informal Procedure, the assessors elected to transfer the proceedings to the formal docket. See G.L. c. 58A, § 7A.

FINDINGS OF FACT AND REPORT

Based on documentary evidence and testimony submitted by the parties during the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

As of January 1, 2018, the valuation and assessment date for the fiscal year at issue, the appellants were the assessed owners of an 85,378-square-foot parcel of land improved with a single-family home ("subject home") with an address of 88 Old Sudbury Road in Lincoln but also known as 61 Waltham Road in Wayland ("subject property"). The subject property straddles the Wayland-Lincoln town line, with 73,181 square feet of land located in Wayland and the remaining 12,197 square feet located in Lincoln. The town line also divides the subject home.

For the fiscal year at issue, the assessors initially valued the subject property within its borders at \$747,700, while Lincoln assessors valued the subject property within its borders at \$791,900, for a combined assessed value of \$1,539,600 between the two towns. The assessors assessed a tax on the \$747,700 Wayland property value, at the rate of \$18.28 per thousand, in the total amount of \$13,845.56, including the Community Preservation Act ("CPA") surcharge. The appellants did not timely pay the taxes due to Wayland without incurring interest. However, the average of the taxes due to Wayland for the three fiscal years preceding the

fiscal year at issue did not exceed \$5,000.² See G.L. c. 59, §§ 64 and 65. Therefore, the failure to timely pay the taxes at issue was not an impediment to the Board's jurisdiction.

The appellants timely filed an Application for Abatement with the assessors on January 28, 2019. The assessors granted a partial abatement on April 1, 2019, reducing the subject property's Wayland assessment to \$622,500. Not satisfied with this reduction, the appellants seasonably filed an appeal with the Board on April 17, 2019. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

Although the appellants contested the Wayland assessment, first by filing an abatement application with the assessors and then this appeal to the Board, the appellants filed no challenge to the Lincoln assessment, either with the Lincoln assessors or the Board. Accordingly, the sole issue in dispute in this appeal is the value of that portion of the subject property, land and building, located in Wayland.

At the outset of the hearing, the assessors conceded that a small abatement is due the appellants because of a measurement error in computing the subject home's value attributed to Wayland, thus reducing the subject home's Wayland assessment from \$315,200 to \$287,500. With this adjusted home value, together with the

² Taxes due in Wayland on the subject property for the three prior fiscal years were: \$2,883.28 (fiscal year 2016); \$3,045.63 (fiscal year 2017); and \$3,149.92 (fiscal year 2018), for a three-year average of \$3,026.28.

Wayland land assessment of \$307,300, the assessors agreed that the total Wayland assessment should be \$594,800 for the subject property for the fiscal year at issue.

The adjusted Wayland assessment of \$594,800, when added to the Lincoln assessment of \$791,900, results in a combined value for the subject property in both towns of \$1,386,700 for the fiscal year at issue. The parties agreed that the combined value of \$1,386,700 exceeded the fair cash value of the subject property for the fiscal year at issue, and that the total fair cash value of the property, had it been entirely within Wayland, would be \$1,064,900.

The appellants did not challenge the revised assessed value of the subject home. Rather, they argued that all of the Wayland land should have been valued as excess or residual land and all of the more valuable "prime lot" land should have been taxable in Lincoln. As described below, the assessors divided the prime lot between Wayland and Lincoln and attributed a portion of the prime lot value to Wayland, resulting in the present dispute.

I. The Assessors' Case

Although the party with the burden of proof in Board hearings typically puts its case on first, the parties agreed that, because the assessors' methodology for arriving at a division of the prime lot value between the two towns was the central issue in this appeal, the assessors would proceed with their evidence first.

However, the burden of proof remained with the appellants to establish that the Wayland assessed value exceeded the fair cash value of the portion of the subject property attributable to Wayland.

The assessors' witness, Bruce Morgan, was hired as a senior appraiser by the assessors for the fiscal year at issue, which was a certification year for the appellee. When a community is preparing for a certification year, the local assessors must provide detailed market and statistical data to the Massachusetts Department of Revenue's Bureau of Local Assessment ("BLA") to establish to the BLA's satisfaction that the assessors' valuation methodologies are supported by market data and are applied uniformly and equitably. **Information Guideline Release ("IGR") 19-08**. Mr. Morgan, with approximately thirty-five years of appraisal experience and formerly a certification supervisor with the BLA, was responsible for preparing and presenting the assessors' valuation data to the BLA for certification.

As part of his preparation for the certification year, Mr. Morgan observed that there were three Wayland properties that straddled the border with Lincoln, including the subject property. When he reviewed the prior assessments of these properties, he determined that both Wayland and Lincoln had been assessing these border properties incorrectly. Prior to the fiscal year at issue, the portion of the subject property in Wayland was assessed

entirely as "rear acreage" land, while the portion of the subject property in Lincoln was assessed using a so-called land-curve methodology for an undersized prime lot in Lincoln.³ The result of these methods was that the subject property's 73,181 square feet of land in Wayland was assessed at \$48,600, or approximately \$0.66 per square foot, while the 12,197 square feet of land in Lincoln, less than one-fifth the size of the Wayland parcel, was assessed at \$404,500, or approximately \$33.16 per square foot.

Mr. Morgan testified that he contacted Mr. Harold Scheid and Mr. Nate Cramer, both from the Lincoln assessors' office, to discuss and rectify what he deemed a discrepancy in valuing border properties like the subject property. Mr. Morgan opined that the current land-curve methodology employed by Lincoln resulted in an excessively high land valuation for Lincoln.

Mr. Morgan explained to the Lincoln assessors that the subject property needed land from both communities to meet the minimum lot size and access requirements to be considered a buildable lot. The subject property lacks frontage on a public way in Wayland and does not meet the minimum lot-size requirement in Lincoln. Mr.

³ The starting point for a land-curve methodology is the per-square-foot value of a parcel that complies with the minimum residential lot size according to the community's zoning ordinance. For those lots that are smaller than the minimum required lot size, either due to grandfathering or other reasons, the per-square-foot value of the smaller lot is increased, to recognize the inherent value of a parcel that supports a residential use. For example, in the present case, Lincoln applied a value of \$6.78 per acre for an 80,000 square foot prime lot but assessed the appellants at \$33.16 for the appellants' undersized 12,197 square foot prime lot in Lincoln.

Morgan thus proposed a valuation method whereby both communities shared in the prime-lot value because land from both towns was necessary to constitute a buildable lot.

According to Mr. Morgan's testimony and the email communications in evidence, the Lincoln assessors were not amenable to changing their method of valuing the border properties. The Lincoln assessors held fast to their present method, reasoning that with respect to border properties, the primary consideration should be which community provides municipal services to the property, including education, public safety, and snow plowing, which for the subject property was Lincoln.

Despite the Lincoln assessors' position, the appellee proceeded with a new valuation method that, in Mr. Morgan's opinion, more appropriately valued border-property land located in Wayland. Mr. Morgan noted that, for the fiscal year at issue, the prime-lot area was 60,000 square feet in Wayland and 80,000 square feet in Lincoln. Mr. Morgan proposed using the lower Wayland requirement of 60,000 square feet for a prime lot. For the subject property, Mr. Morgan considered all 12,197 square feet in Lincoln as prime-lot land, with 47,803 square feet of land in Wayland comprising the remainder of the 60,000-square-foot prime lot. The remaining 29,378 square feet of land in Wayland was assessed as rear-acreage land. The appellee thus calculated rounded values of

\$298,600 for the prime-lot land and \$8,700 for the rear-acreage land, for a total Wayland land valuation of \$307,300.

Mr. Morgan testified that if the Lincoln assessors followed this same method, the 12,197 square feet of the subject property's Lincoln land would be assessed at the Lincoln prime-lot value of \$6.78 per square foot, in contrast to the subject property's assessed land value in Lincoln of \$33.16 per square foot based on the land-curve methodology, for a combined land assessment in the two towns of \$390,000. Together with the Wayland value of the subject home at \$287,500 as agreed by the parties, and the Lincoln assessed value of the subject home at \$387,400, the total combined assessment for the fiscal year at issue would be a rounded value of \$1,064,900, which is the amount that the parties agreed reasonably represented the fair cash value of the subject property for the fiscal year at issue.

II. The Appellants' Case

The appellants presented their case through their testimony and the testimony of the Lincoln assessor, Mr. Scheid. With respect to border properties like the subject property, Mr. Scheid opined that property values between two towns should be allocated according to the community that provides municipal services to the property. Without offering a specific critique of Mr. Morgan's allocation of value methodology, Mr. Scheid maintained that

Lincoln is entitled to all of the prime-lot value because it provides services to the appellants.

Ms. Brogan, one of the appellants, noted that the subject property has no street frontage in Wayland and cited to Massachusetts Department of Revenue's Division of Local Services **IGR 16-401**⁴, defining a "prime lot" as land on a "municipally accepted way." The appellants then submitted the Town of Wayland GIS Map 61, as well as a downloaded copy of the Town of Wayland's Town Clerk's Office Accepted Street List, to demonstrate the subject property was not located on a municipally accepted way in Wayland. Therefore, the appellants contended, the assessment of a portion of the subject property in Wayland as a prime lot was improper.

III. The Board's Findings

Based on the evidence presented, the Board found and ruled that the appellants failed to expose flaws in the assessors' method of assessing the subject property's Wayland land and failed to meet their burden of proving overvaluation. The appellants presented evidence related only to street frontage and municipal services. However, as will be explained in the Opinion below, these factors are not, standing alone, dispositive in determining the fair cash value of the subject property.

⁴ The Board notes that **IGR 16-401** was superseded twice prior to the fiscal year at issue. See **IGR 17-01** and **IGR 19-08**. The operative language, however, remains substantially similar.

The Board also found that the method employed by the assessors - in which the lower of the two communities' prime-lot requirements was satisfied, and both communities shared the prime-lot value - resulted in a reasonable allocation of the subject property's land value that recognized the need for land located in both towns to constitute a buildable residential lot.

Further, the assessors' methodology, if Lincoln had also employed it, would have resulted in a total value of the subject property consistent with the parties' agreement regarding its fair cash value. As it is, because Lincoln assessed the appellants a land value of over \$400,000 based on a land-curve, prime-lot valuation methodology of all of the appellants' land in Lincoln, the total assessed values of the subject property in Lincoln and Wayland exceeded its fair cash value. However, the appellants chose not to challenge the Lincoln assessment. On the basis of all of the evidence in this appeal, the Board found and ruled that the appellants failed to meet their burden of proving that the Wayland land assessment exceeded the fair cash value of the portion of the subject property's land located in Wayland.

However, based on the assessors' acknowledgment that the assessment of the subject home was excessive by \$27,700 because of a measurement error, the Board issued a Decision for the appellants, granting an abatement in the amount of \$513.96.

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).

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) (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. v. Assessors of Lynn***, 393 Mass. 591, 598 (1984) (quoting ***Schlaiker***, 365 Mass. at 245).

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.***, 393 Mass. at 600 (quoting ***Donlon v. Assessors of Holliston***, 389 Mass. 848, 855 (1983)).

In the instant appeal, the appellants attempted to expose errors in the assessors' method of valuation of the subject

property by challenging the valuation of 47,803 square feet of Wayland land. As previously noted, the appellants contended that no part of their land in Wayland should be valued as a prime lot. The appellants principally relied on language taken from **IGR 16-401**, which provides that, for purposes of valuing state-owned land, a prime lot requires that the land be located on a "municipally accepted way." Because the Wayland portion of the subject property is not located on a municipally accepted way, the appellants maintained that their Wayland land should be valued as excess land.

However, **IGR 16-401** goes on to provide that:

Prime lots must meet local zoning requirements in effect as of the appraisal date (January 1 of the valuation year). Zoning requirements include permitted uses, size, frontage, width, and setbacks.

Under the appellants' theory, neither town would be entitled to value any portion of the subject property as a prime lot - the Wayland land has no frontage on an accepted way and the Lincoln land is far too small to satisfy Lincoln's zoning requirements.

In an analogous context, courts have ruled that, where a property is split between two zoning districts, an owner seeking to build or improve the land in one district can combine their land with contiguous land in another district to satisfy frontage and other zoning requirements. See, e.g., **Tofias v. Butler**, 26 Mass. App. Ct. 89, 92-96 (1988) (citing **Tambone v. Board of Appeal of Stoneham**, 348 Mass. 359 (1965)). This concept is equally

applicable here, where land from both Wayland and Lincoln is necessary to satisfy either town's zoning requirements for building a residence.

Moreover, principles of valuation of state-owned land are not generally applicable to the valuation of property for real estate tax purposes because they are based on different statutory schemes designed for different purposes. The valuation of state-owned land is governed by G.L. c. 58, §§ 13 through 17. These provisions provide municipalities with "only an approximate reimbursement of lost taxes," recognizing that the proportional value of the land in any given municipality compared to all state-owned land throughout the Commonwealth "is more important than the absolute value of the land." ***Board of Assessors of Sandwich v. Commissioner of Revenue***, 393 Mass. 580, 587 (1984). The Commissioner of Revenue is given wide latitude in valuing state-owned land under §§ 13 through 17, and the value can only be successfully challenged by showing that the valuation methodology or its implementation, as opposed to the valuation of individual parcels, is flawed. ***Id.*** at 588.

In contrast, valuation for general real estate tax purposes is based on the fair cash value of each parcel of real estate. See G.L. c. 59, § 38. Although the Board's role in a state-owned land appeal is limited to determining whether the valuation methodology and its implementation are consistent with the proportional

reimbursement purposes of §§ 13 through 17, the Board conducts a *de novo* review of a property tax assessment under G.L. c. 59, §§ 64 and 65 and makes an "independent judgment of value based on all the evidence" and may select "any method of valuation that is reasonable and that is supported by the record." ***Board of Assessors of Sandwich***, 393 Mass. at 586.

On the basis of the record, the Board found and ruled that the methodology used by the assessors to value the portion of the subject property in Wayland provides a superior indication of its value compared to the methodology offered by the appellants. The assessors' methodology appropriately allocates the value of the subject property by recognizing the contribution to the value of the land in both towns. The portion of the subject property in Wayland would not be a buildable lot because it lacks street frontage, while the portion in Lincoln would also be unbuildable because of its size. Accordingly, Wayland was entitled to share in the prime lot value and the appellants have not shown that the assessors' methodology attributed excess value to their land in Wayland for the fiscal year at issue.

Because it similarly ignored the contribution of the Wayland land to the subject property's value, the Board rejected the suggestion of the Lincoln assessor that value allocation of properties located in two municipalities should depend only on the level of services provided by the municipalities. In addition, the

appellants point to no persuasive authority for such an approach, and the Board is aware of none. Finally, linking real estate tax to services provided is an unworkable formula and would lead to arguments about the extent of use of municipal services, including local public schools, elder services, snow removal, street cleaning, and a host of other municipal services that some taxpayers may use while others do not.

In summary, the Board found that, in accordance with the agreement by the parties, the Wayland portion of the subject home was overvalued by \$27,700. However, the Board found and ruled that the appellants failed to meet their burden of proving that the assessed value of the subject property's land located in Wayland exceeded its fair cash value for the fiscal year at issue. Accordingly, the Board issued a Decision for the appellants based on the assessors' measurement error and granted an abatement in the amount of \$513.96.

THE APPELLATE TAX BOARD

By: /s/ Mark J. DeFrancisco
Mark J. DeFrancisco, Chairman

A true copy,

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