THE COMMONWEALTH OF MASSACHUSETTS
Appellate Tax Board
100 Cambridge Street
Suite 200
Boston, Massachusetts 02114

(617) 727-3100
(617) 727-6234 FAX

Docket No. F306087

ALAN & SUSAN SLISKI
Appellants.

BOARD OF ASSESSORS OF
THE TOWN OF LINCOLN
Appellee.

DECISION WITH FINDINGS

The reinstated Decision is for the appellee. This appeal was originally decided by the Appellate Tax Board ("Board") on September 17, 2014, along with three other related dockets. *See* ***Alan and Susan Sliski v. Assessors of Lincoln,*** Mass. ATB Findings of Fact and Reports 2014-597. The four dockets, which were consolidated for hearing, involved contiguous, improved and unimproved parcels of real estate owned by the appellants. Most, but not all, of the real property at issue was valued and assessed as productive woodland and pasture pursuant to G.L. c. 61A, and has been so assessed for approximately 25 years. The issue in dispute in the original appeals was the propriety of the parcels' assessed values for fiscal years 2010 and 2011.

The appellants appealed the Board's decisions in favor of the appellee to the Massachusetts Appeals Court ("Appeals Court"). On February 23, 2016, the Appeals Court issued a Memorandum and Order Pursuant to Rule 1:28, upholding the Board's determinations with the exception of the assessed value of 273 Concord Road ("subject property") for fiscal year 2010. *See* ***Mass. App. Ct. No. 14-P-1644, Memorandum and Order Pursuant to Rule 1:28,*** 1-2 (February 23, 2016) ("[W]e vacate that portion of the board's decision pertaining to the 2010 tax for 273 Concord Road and remand the matter for further consideration by the board."). Accordingly, the assessed value of the subject property for fiscal year 2010 is the only issue before the Board in this remanded appeal.

The subject property is a 4.665-acre parcel of land improved with a single-family residence, a barn, and a shed. Its total assessed value for fiscal year 2010 was $726,397, and that total was broken down as follows: 3.54 acres valued under G.L. c. 61A and valued at a total of $382.00; 1.0 acres valued as excess acreage and valued at

a total of $115.00; and 5,445 square feet, which consists of the land beneath the improved portions of the subject property, valued as a prime site at a total of $352,800.

In vacating and remanding that portion of the Board's decision relating to the subject property's fiscal year 2010 assessed value, the Appeals Court specifically directed the Board to consider the multiplier factor of 9.00 used by the assessors in valuing the subject property's prime site, as that factor was "unexplained in the record." ***Id.*** The Appeals Court therefore remanded the case to the Board for

> "reconsideration and findings concerning the valuation of the prime site (and, particularly the use of the factor of 9.00), and whether the valuation of the prime site impermissibly undermined the tax purpose and effect of G.L. c. 61A on the remainder of the parcel and on the valuation of the property as a whole."

Id. at 4. Consistent with this directive, the Board re-opened the matter and held an evidentiary hearing on December 5, 2016, during which the parties offered additional evidence, including testimony. Among the documentary exhibits offered by the assessors at the evidentiary hearing was Exhibit F, which was a Residential Land Chart ("Land Chart").[1] The Land Chart shows the land valuations in Lincoln, by parcel size, ranging from the standard prime site lot of 80,000 square feet down to a prime site as small as 1,000 square feet. Harald Scheid, who testified on behalf of the assessors, stated that since a conforming building lot in Lincoln is 80,000 square feet, most prime sites are that size, but there are some smaller prime sites in Lincoln, most of which had been grandfathered.

Also set forth on Exhibit F are the factors used for each lot size, beginning with a factor of 1.0 for an 80,000-square foot prime site, and gradually increasing as the lot size decreases. The highest factor applied by the assessors was a factor of 9.00, and that was for prime sites from 1,000 to 6,000-square feet in size. The subject property's prime site fell within that range, at 5,445 square feet, and thus the assessors applied a factor of 9.00 in setting its assessed value, as they did for the other parcels that fell within that range. As Mr. Scheid testified, the use of these factors was meant to reflect the well-established valuation principle that unit price decreases as unit size increases, and the collorary principle that unit price increases as unit size decreases. The graduated factors, explained Mr. Scheid, were used by the assessors to ensure that smaller prime sites are valued in line with the market.

[1] Exhibit F is the fiscal year 2011 Residential Land Chart used by the assessors. There was some confusion between the parties as to which of the previous four appeals were remanded by the Appeals Court for reconsideration. Both parties erroneously believed that the appeals relating to fiscal year 2011 had also been remanded for reconsideration, and thus some of the evidence they offered, including Exhibit F, related to fiscal year 2011. However, Harald Scheid, who testified on behalf of the assessors and whom the Board found to be credible, explained that the methodology set forth on Exhibit F was the same as the methodology, and factors, used by the assessors for fiscal year 2010. As Exhibit F was offered to explain the rationale behind the assessors' use of factors, rather than for any particular figure contained thereon, the Board found Exhibit F to be both probative and reliable for purposes of the present appeal.

On the basis of the evidence, with particular reliance on Exhibit F, the Board concluded that the assessors demonstrated a sound rationale for applying the factor of 9.00 in valuing the subject property's prime site. The inverse relationship between unit sizes and unit prices has been recognized and adopted by the Board in numerous past appeals, and the Board found and ruled that the use of graduated factors by the assessors in valuing prime sites was an appropriate valuation methodology. *See* ***Boquist v. Assessors of Lincoln,*** Mass. ATB Findings of Fact and Reports 2014-704 (upholding assessment in a matter substantially identical to the present appeal); ***Seto v. Assessors of Quincy,*** Mass. ATB Findings of Fact and Reports 2006-585, 591; ***Finigan v. Assessors of Belmont***, Mass. ATB Findings of Fact and Reports 2004-533, 537 ("One cannot take a unit of value for a given parcel and apply that unit value to increase the value of a larger parcel or decrease the value of a smaller one"); *see also* APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE 212 (13th ed. 2008). Moreover, the evidence showed that the use of a factor of 9.00 was not arbitrary or unique to the subject property, but was applied in a manner consistent with the valuation of other properties in the same size range within Lincoln, pursuant to the schedules set forth on the Land Chart. Accordingly, the Board found and ruled that the assessors' use of the factor of 9.00 was both permissible and appropriate.

As instructed by the Appeals Court, the Board next considered "whether the valuation of the prime site impermissibly undermined the tax purpose and effect of G.L. c. 61A on the remainder of the parcel and on the valuation of the property as a whole." ***Mass. App. Ct. No. 14-P-1644, Memorandum and Order Pursuant to Rule 1:28*** at 4. Based on the record evidence, the Board concluded that it did not.

Among the exhibits entered into the record at the original hearing of the consolidated appeals was Exhibit 1, which contained, along with other documents, the assessors' fiscal year 2010 Residential Land Residuals Analysis ("Land Residuals Analysis"). The Land Residuals Analysis furnishes the basis for assessed land values. For fiscal year 2010, the Land Residuals Analysis featured a listing of 32 arm's-length, calendar year 2008 property sales within Lincoln.[2] Twelve of the 32 sales were in the same "MA" neighborhood as the subject property. Those 12 sales ranged in sale price from a low of $620,000 to a high of $1,860,000, with an average sale price of $1,154,375. They ranged in lot size from 0.58 acres to 3.38 acres, with most of the properties ranging from 1.5 to 2.5 acres in size. All twelve of the properties were significantly smaller in lot size than the subject parcel, which was 4.665 acres, and yet only one sold for less than the assessed value of the subject property, while the remaining 11 sold for more, and in most cases, significantly more, than the subject property's assessed value. Although lacking in some of the comparative information regarding the improvements for each of the properties, the Board found this evidence to be strongly suggestive that the subject property is assessed for well below fair market value, and thus is being afforded the benefit of reduced valuation offered by G.L. c. 61A.

[2] Because the relevant date of valuation for fiscal year 2010 is January 1, 2009, the most probative sales for determining fair market value are sales that occurred in the time period leading up to that date, which were calendar year 2008 sales.

Additionally, according to the Land Residuals Analysis, the land values for the 12 properties in the subject property's "MA" neighborhood ranged from $518,000 to $758,000, and each of those parcels was significantly smaller than the subject property, which had a total assessed land value of $353,297. This evidence was but another indication that the subject property was assessed for significantly less than other, similar properties in Lincoln and less than fair market value, and the Board concluded that the subject property was being afforded the benefit of reduced valuation offered by G.L. c. 61A. As the appellants, who at all times retained the burden of proving their entitlement to an abatement, offered no market evidence to refute this conclusion, the Board found and ruled that they failed to meet their burden of proof. "'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)).

In conclusion, after reconsidering the record, the Board found and ruled that the assessors' use of the factor of 9.00 in valuing the subject property's prime site was proper. The Board likewise found and ruled that the valuation of the subject property, both its component parts and as a whole, did no harm to the tax purpose and effect of G.L. c. 61A, nor did it in any way deprive the appellants of enjoying the statute's intended benefits of reduced taxation. Accordingly, the Board reinstates its decision for the appellee in this appeal.

APPELLATE TAX BOARD

_____ Chairman

_____ Commissioner

_____ Commissioner

_____ Commissioner

Patricia M. Good Commissioner

Attest: _____
Clerk of the Board

Date: FEB - 7 2017
(Seal)

NOTICE: Either party to these proceedings may appeal this decision to the Massachusetts Appeals Court by filing a Notice of Appeal with this Board in accordance with the Massachusetts Rules of Appellate Procedure. Pursuant to G.L. c. 58A, § 13, no further findings of fact or report will be issued by the Board.