COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

DANIEL LLOYD CLARK AND DEBORAH CARR CLARK v.

BOARD OF ASSESSORS OF THE TOWN OF ROCHESTER

Docket No. F339898

Promulgated: January 17, 2023

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 Board of Assessors of the Town of Rochester ("appellee" or "assessors") to abate a tax on real estate owned by and assessed to Daniel Lloyd Clark and Deborah Carr Clark ("appellants") for fiscal year 2020 ("fiscal year at issue").

Chairman DeFrancisco heard the appeal. He was joined by Commissioners Good, Elliott, and Metzer in the 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.

Daniel Lloyd Clark, pro se, for the appellants.

Chuck Shea, Assessor, Karen Trudeau, Assessor, and Debbi Lalli, Board Member, for the appellee.

FINDINGS OF FACT AND REPORTS

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

On January 1, 2019, the appellants were the assessed owners of a two-acre parcel of land improved with a single-family dwelling located at 240 Mary's Pond Road in the Town of Rochester ("subject property"). For the fiscal year at issue, the assessors valued the subject property at \$1,108,200 and assessed a tax thereon at the rate of \$13.48 per \$1,000 in the total amount of \$14,938.54. The appellants timely paid the tax assessed without incurring interest. On December 3, 2019, in accordance with G.L. c. 59, § 59, the appellants timely filed an abatement application with the assessors prior to the due date of the first installment of the semi-annual actual tax bill for the subject property. appellants' opinion of value as listed on their abatement application was \$950,000. On February 19, 2020, the appellee granted a partial abatement, reducing the subject property's assessed value to \$1,081,300. Not satisfied with this reduction, the appellants seasonably filed their appeal with the Board on May 15, 2020. Based on these facts, the Board found and ruled that it had jurisdiction to hear and decide the instant appeal.

The subject property is improved with a 5,150-square-foot, Colonial-style, single-family residence built in 2016 and consisting of nine rooms, including four bedrooms, as well as four full bathrooms and one-half bathroom ("subject home"). The subject home includes a partially finished walkout basement, a large patio, a screened-in porch, and an attached three-car garage and shop. Several permits pulled for the construction of the subject home reflected total costs of \$1,665,000.

The subject property is located within a compound known as East Over Farm, which encompasses nearly eighty acres of land, most of which is subject to conservation easements; the subject property itself is not subject to a conservation easement. Mr. Clark testified to his understanding that the subject property is an "over improvement." The appellants' stated reason for constructing the subject property in such a manner was that they were trying to ensure a family legacy while providing the town an appealing landmark that attracts visitors.

At the time that they began construction of the subject home, the appellants were living in another home located within the East Over Farm compound, a 2.31-acre lot at 272 Mary's Pond Road, referred to by the appellants as the Farmhouse. The Farmhouse was built in the 1850s, but the appellants renovated it several times over their twenty-year ownership, investing more than \$1,300,000 in this process. At the time that they sold it, the Farmhouse

contained 5,553 square feet of living area consisting of a total of thirteen rooms, including seven bedrooms, as well as four full bathrooms and two half bathrooms. Other amenities of the Farmhouse property included three detached barns, and an in-ground pool. The appellants sold the Farmhouse property on March 30, 2018, for \$995,000.

The appellants submitted a listing of sales in Rochester that had occurred from 2011 to 2018 for properties that were between two and four acres in size. Of these fifty-seven sales, only one sale - the Farmhouse property - approached \$1,000,000.

The appellants next presented a valuation witness, Wayne J. Valliere, whom the Board qualified as an expert witness in the valuation of residential property. The appellants' appraiser testified and offered an appraisal report. He performed a salescomparison analysis as well as a cost-approach analysis, which he used as a check on his sales-comparison analysis. For his salescomparison analysis, the appellants' appraiser relied on four purportedly comparable sales, including the 2018 sale of the Farmhouse. These sales ranged in size from two acres to six acres and were improved with single-family homes that ranged from 3,415 square feet to 5,553 square feet, with the Farmhouse being the outlier for living area. The other three purportedly comparable properties were located from more than two to more than four miles away. The appellants' appraiser testified that these properties

were in the same competitive market as the subject property, and all were remodeled prior to sale. After adjustments for room count, living area, finished basement area, and other structures like barns and pools, the appellants' appraiser arrived at an opinion of value of \$852,000 for the subject property.

The appellee presented their case through the testimony of assessor Chuck Shea ("assessor"). The appellee offered a salescomparison analysis consisting of five purportedly comparable properties ranging in price from \$455,000 to \$990,000. With respect to the three middle-value properties, two sold for \$510,000 and one for \$810,000. The assessor conceded that the subject property was superadequate, and further conceded that the living area of the subject property was 5,150 square feet, not 6,230 square feet as listed on the property record card issued before the partial abatement, an error of 1,080 square feet.

Based on the evidence presented by the parties, the Board found that the comparable property most informative for the subject property's fair cash value was the Farmhouse, located within the same East Over Farm compound, which sold in 2018 for \$995,000. The sales price of the Farmhouse property provided probative evidence of the subject property's fair cash value, both for its location in the same East Over Farm compound and in consideration of both properties' superadequacies. Yet while both properties were superadequate, the Board found that the Farmhouse was superior in

terms of living area, room count, and amenities. Most properties offered by the appellee did not approach the quality of the subject property. Using the Farmhouse property as the most informative comparable property, and with consideration of other properties at the high end of the sales range offered by both parties, the Board found that \$950,000, the appellants' opinion of value as listed on their abatement application, was a reasonable fair cash value for the subject property.

The Board thus found that the appellants met their burden of proving a fair cash value for the subject property that was less than its assessed value for the fiscal year at issue. Accordingly, the Board issued a decision for the appellants and ordered abatement of \$1,769.93.

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). A taxpayer has the burden of proving that the property at issue 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 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 taxpayer[] sustain[s] 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 the Board, a taxpayer "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 (citing Donlon v. Assessors of Holliston, 389 Mass. 848, 855 (1983)).

In the present appeal, the Board found that the appellants provided sufficient persuasive evidence to establish overvaluation of the subject property for the fiscal year at issue, specifically the sale of the Farmhouse property in 2018. Like the subject property, the Farmhouse property was superadequate. "[A] 'superadequacy' . . . is a type of functional obsolescence caused by something in the subject property that 'exceeds market requirements but does not contribute to value an amount equal to its cost.'" Harbor Dreams, LLC v. Assessors of Hingham, Mass. ATB Findings of Fact and Reports 2004-56, 96 (quoting The Appraisal

Institute, The Appraisal of Real Estate (12th Ed., 2001) at 404).¹
"Superadequacy ... complicates sales comparisons, because substantial differences in square footage, grade, or amenities must usually be accounted for, yet adjustments cannot be made on a one-for-one basis." Antonino & Dimare v. Assessors of Shutesbury,

Mass. ATB Findings of Fact and Reports 2008-54, 70 (citing Maher,

Trustee of North Country Realty Trust v. Assessors of Quincy, Mass.

ATB Findings of Fact and Report 2007-1022, 1034 and Boch v.

Assessors of Edgartown, Mass. ATB Findings of Fact and Reports 1996-641).

Of the comparable-sales properties presented by both parties, the Board found only the Farmhouse property - located in the same compound as the subject property and superadequate - to be reasonably comparable to the subject property. The Board was persuaded by the sale of the Farmhouse property in 2018 for \$995,000, particularly as it was within a year of the assessment date for the fiscal year at issue. Considering appropriate adjustments for the superiority of the Farmhouse property, the Board found and ruled that the appellants' opinion of value for the subject property of \$950,000, as listed on their abatement application, was a reasonable reflection of the subject property's fair cash value. See Cummington School of Arts, Inc. v. Assessors

 $^{^{1}}$ The citation to the latest version of The Appraisal of Real Estate (15th Ed. 2020) is page 584.

of Cummington, 373 Mass. 597, 605 (1977) ("The credibility of witnesses, the weight of the evidence, and inferences to be drawn from the evidence are matters for the board.").

Accordingly, the Board issued a decision for the appellants and granted abatement of \$1,769.93 for the subject property for the fiscal year at issue.

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