

COMMONWEALTH OF MASSACHUSETTS

APPELLATE TAX BOARD

MOHAMED AND KRISTEN HEGAZI

v.

**BOARD OF ASSESSORS OF THE
TOWN OF NORTON**

Docket No. F337419

Promulgated:
April 28, 2022

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 Norton ("assessors" or "appellee") to abate a tax on certain real estate located in the Town of Norton owned by and assessed to Mohamed and Kristen Hegazi ("appellants") for fiscal year 2019 ("fiscal year at issue").

Commissioner Good heard this appeal and was joined in the decision for the appellants by former Chairman Hammond and Commissioners Elliott, Metzger, and DeFrancisco.

These findings of fact and report are promulgated pursuant to requests by the appellants¹ and the appellee under G.L. c. 58A, § 13 and 831 CMR 1.32.

Benjamin H. Dowling, Esq., for the appellants.

Ellen M. Hutchinson, Esq., and *Denise Ellis,* director of assessing/appraiser, for the appellee.

¹ The appellants filed a Request for Findings and Rulings of Law under 831 CMR 1.29, which the Board treated as a request under 831 CMR 1.32.

FINDINGS OF FACT AND REPORT

On the basis of the testimony and exhibits offered into evidence at the hearing of this appeal, the Appellate Tax Board ("Board") made the following findings of fact.

I. Introduction and jurisdiction

On January 1, 2018, the relevant date of valuation and assessment for the fiscal year at issue, the appellants were the assessed owners of real property located at 124 Bay Road in the Town of Norton ("subject property"). The subject property consists of a 6,923-square-foot, Colonial-style house ("subject house") situated on 9.59 acres. The subject house has eleven rooms, including five bedrooms, four and a half bathrooms, and a three-car garage. Additional amenities include several decks, two fireplaces, a basketball court, an above-ground pool, a shed, and a freestanding accessory unit with two bedrooms. The appellants purchased the subject property in 2012 for \$1,445,000.

The assessors valued the subject property at \$2,005,200 for the fiscal year at issue and assessed a tax thereon at the rate of \$14.90 per \$1,000 in the amount of \$29,877.48. The appellants paid the tax due without incurring interest. The appellants filed an abatement application with the assessors on January 15, 2019, and the assessors granted a partial abatement on January 22, 2019, adjusting the assessed value to \$1,995,600 ("revised

assessed value"). The appellants filed a petition with the Board on April 8, 2019, seeking a further reduction. Based upon this information, the Board found and ruled that it had jurisdiction to hear and decide this appeal.

II. The appellants' case

The appellants offered the testimony of Howard Dono ("appellants' appraiser"), a certified general real estate appraiser, and Sheri Bishop, the appellants' real estate agent, as well as an appraisal report prepared by the appellants' appraiser.

The appellants' appraiser used a sales-comparison approach in his analysis, relying upon four allegedly comparable properties located in Norton, Sharon, Canton, and Raynham that sold between December 2016 and July 2017 for \$680,000 to \$1,640,000. These properties were all improved with Colonial-style houses ranging in size from 4,142 square feet to 7,269 square feet, with lots ranging from 1.04 acres to 2.97 acres. After adjustments by the appellants' appraiser - including upward adjustments of 7 percent for 2016 sales and 2 percent for 2017 sales, and an upward adjustment of \$643,200 for one property - the sale prices ranged from \$1,200,700 to \$1,382,600 for his comparable properties. Based on these adjusted sale prices, his opinion of the subject property's fair cash value for the fiscal year at issue was \$1,300,000. He also testified

that from 2013 to the time of the hearing, no property in Norton had sold for more than \$1,000,000.

Ms. Bishop, a realtor with nearly twenty years of experience selling properties in southeastern Massachusetts, testified that the appellants listed the subject property for sale in July 2020 and that her initial opinion for a listing price was \$1,500,000. After discussion with the appellants, it was instead listed for \$1,799,000 from July 2020 to December 31, 2020. During that time, according to Ms. Bishop, there were no offers for or showings of the subject property, and only one phone inquiry asking if the appellants would be willing to consider selling the subject property in the range of \$1,400,000.

III. The appellee's case

Apart from the jurisdictional documents and cross-examination of the appellants' appraiser, the appellee relied upon the presumed validity of the assessment.

IV. The Board's findings

The Board found that the allegedly comparable properties - most of which were not even located in Norton - analyzed by the appellants' appraiser were overall not very comparable to the subject property, given the significant adjustments that were necessary. For instance, a \$643,200 adjustment nearly doubled the sale price of one of the comparable properties that he

selected. The Board gave some weight to the comparable located in Raynham, whose adjusted sale price was \$1,264,000. Though the Raynham property's lot size was much smaller at 2.97 acres versus the subject property's 9.59 acres, and it lacked some of the amenities of the subject property such as the decks, the Board found that the Raynham property was closest in age (fourteen years old), size (6,195 square feet), and location (7.75 miles) to the subject property, and that its adjusted sale price supported the Board's conclusion of fair cash value for the subject property. The Board also was persuaded by the testimony of the appellants' appraiser that no property had sold for more than \$1,000,000 in Norton from 2013 to the time of the hearing, as well as Ms. Bishop's testimony concerning the dearth of inquiries on the subject property when it was listed for sale at \$1,799,000.

The Board attributed the largely insufficient comparables and disinterest in the subject property in part to functional obsolescence caused by its superadequacy, whereby the subject property was essentially overimproved for its location. After consideration of all the evidence, including that the appellants paid \$1,445,000 for the subject property in 2012 and that the appellants' appraiser acknowledged a rising market through his upward adjustments for sales in 2016 and 2017, the Board found that \$1,600,000 was reflective of the subject property's fair

cash value for the fiscal year at issue. This equated to an approximately 20 percent reduction in the revised assessed value. Accordingly, the Board found and ruled for the appellants and granted an abatement of \$5,894.44 for the subject property for the fiscal year at issue.

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 of them 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 [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 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 (quoting **Donlon v. Assessors of Holliston**, 389 Mass. 848, 855 (1983)).

In the present appeal, the Board was mostly skeptical of the allegedly comparable properties offered by the appellants' appraiser given the considerable adjustments that he made to the sale prices of these properties. However, the Board gave some weight to his comparable located in Raynham and also found credible his testimony as to the lack of sales exceeding \$1,000,000 in Norton from 2013 through the time of the hearing. Further, Ms. Bishop's testimony as to the lack of interest in the subject property when it was listed for sale at \$1,799,000 was also useful in establishing that the revised assessed value exceeded fair cash value. See **Cumington School of Arts, Inc. v. Assessors of Cumington**, 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.").

The largely insufficient comparables and disinterest in the subject property supported a finding by the Board of

superadequacy, “[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.” APPRAISAL INSTITUTE, THE APPRAISAL OF REAL ESTATE (15th ed.) at 584. See also ***Maier v. Assessors of Quincy***, Mass. ATB Findings of Fact and Reports 2007-1022, 1032-33.

The Board, taking into consideration all the evidence, including that the appellants paid \$1,445,000 for the subject property in 2012 and that the appellants’ appraiser acknowledged a rising market through his upward adjustments for sales in 2016 and 2017, found that \$1,600,000 was reflective of fair cash value for the fiscal year at issue. See ***Assessors of Quincy v. Boston Consolidated Gas Co.***, 309 Mass. 60, 72 (1941).

Based upon the above and all the evidence presented, the Board found and ruled for the appellants and granted an abatement of \$5,894.44 for the subject property for the fiscal year at issue.

THE APPELLATE TAX BOARD

By: /s/ Patricia M. Good
Patricia M. Good, Commissioner

A true copy,

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