

Robert and Ciona Whitcomb

v.

City of Keene

Docket No.: 16717-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1996 assessment of \$162,800 (land \$19,900; buildings \$142,900) on a residential condominium (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

(1) an April 1, 1996 appraisal estimated the Property's market value at \$138,000;

(2) the \$30,000 value placed on the finished basement and the greenhouse by the City is excessive and would not be captured in the market;

(3) the finish in the basement is an over improvement as it is not a walkout basement and only has three small windows; and

(4) while the greenhouse cost \$8,000 in 1990, it only contributes about \$1,000 to the market value due to its utility.

Page 2

Whitcomb v. City of Keene

Docket No.: 16717-96PT

The City argued the assessment was proper because:

(1) the Taxpayer's appraisal does not accurately reflect the contributory value of the air conditioning, the additional three-quarter bath, the finished basement and the attached residential greenhouse; these items contribute approximately \$40,000 to the Property's value;

(2) six comparable sales indicated a market value of \$128,600 but none included the four additional items which if added support the assessment; and

(3) no locational adjustment is warranted for the Taxpayer's comparable sale 2 because it is in the same development a short distance away.

Board's Rulings

Based on the evidence, the board finds that neither the Taxpayers' appraisal nor the Taxpayers' critique of the City's adjustments for the basement finish, air conditioning, greenhouse and bath carry the Taxpayers' burden.

The board was unable to find the Taxpayers' appraisal's \$138,000 market value estimate conclusive evidence for several reasons: 1) the Taxpayers' \$4,000 adjustment for the basement finish and bathroom was not documented; this adjustment of approximately \$2.90 per square foot ($\$4,000 \div 1,381$ square feet) appears to extremely understate the finished basement and bath values

when compared to the original and current cost estimates submitted by the City and the photographs depicting the quality of the finish; 2) likewise, the Taxpayers' \$1,000 adjustment for the residential greenhouse was undocumented; its value relative to its cost and seasonal utility also appears to be understated; and 3) the appraisal had no adjustment for central air conditioning for the entire house; while this is not a large issue compared to the Property's total value, it is still a factor the market would recognize and needs to be adjusted for.

Notwithstanding the flaws in the Taxpayers' appraisal, the Taxpayers did raise credible arguments relative to the utility of the basement finish and the fact that the main floor living space contains only two bedrooms. To

Page 3

Whitcomb v. City of Keene

Docket No.: 16717-96PT

determine whether any functional depreciation was warranted for these issues, the board reviewed the comparable sales submitted by both parties. The board notes the larger three-bedroom "Franklin" style units sold in a range of \$138,000 to \$160,000 with an average sale price of approximately \$150,000. Doing a paired sales analysis of the average sale price of these larger three-bedroom units to the sale of 5 James Hill Drive property (a smaller two-bedroom unit) indicates a \$22,000 contributory value for the additional bedroom. (Average sale price \$150,000 - \$128,000.) This extracted value for the lack of a third bedroom is very similar to the City's estimate of the contributory value of the finished basement (\$22,500). There was testimony that one of the purposes of the finished basement was to correct for the smaller first floor living area and the existence of only two bedrooms. Even assuming the bedroom extraction value and basement finish are offsets, the additional bathroom, greenhouse and air conditioning are items that need to be

considered and justify the additional \$12,800 in assessment over the average sales price of the "Franklin" units (\$162,800 - 150,000). While it is difficult to extract from the market the contributory market value of these items, it is the board's experience that these features contribute more than that accounted for in the Taxpayers' appraisal. The City estimated these three additional items (three-quarter bath, air conditioning, and the greenhouse) have a contributory value of \$17,500 based on a depreciated cost approach. Consequently, the board finds an estimate of \$12,800 is not unreasonable.

In conclusion, proper analysis of the sales indicate that the Property should be assessed as it is slightly above the larger three-bedroom units based on the market extracted assumption that the basement finish offsets the smaller ground floor area and based on a reasonable contributory value estimate of the additional items.

Page 4
Whitcomb v. City of Keene
Docket No.: 16717-96PT

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as

stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert F. Irwin, Representative for Robert and Ciona Whitcomb, Taxpayers; and Laura J. Thibodeau and Tim Ballantine, Representatives for the City of Keene.

Date: November 20, 1998

Valerie B. Lanigan, Clerk

0006