

Dawn L. Nyberg

v.

Town of Lisbon

Docket No.: 17844-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$146,500 (land \$50,200; buildings \$96,300) on a 2.12-acre lot with a two-family home (the Property). For the reasons stated below, the appeal for abatement is granted to the revised assessment calculated by the Town.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. While the Taxpayer did not carry her burden beyond the Town's revised assessment, an abatement is granted to the Town's revised assessment.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in May, 1997 for \$85,000 in an arm's-length transaction;

- (2) an independent appraisal estimated an April 15, 1997 market value of \$89,000 for the Property; and
- (3) the assessment should be \$109,500.

The Town revised the appealed assessment and argued the revised assessment was proper because:

- (1) the income approach in the Taxpayer's appraisal supports the Town's revised assessment;
- (2) the Taxpayer is very knowledgeable in real estate matters and was able to purchase the Property from the out-of-state owner at a favorable, below-market price;
- (3) the Property is an unusual rental property because the two rental units, at 1,100 square feet (plus or minus) and 1,800 square feet (plus or minus), are substantially larger than most rental units in the Property's market area;
- (4) the Property's location in a predominantly single-family residential neighborhood adds to its value and desirability;
- (5) the Property is a unique rental property due to its relatively large lot;
- (6) the revised assessment is consistent with the assessments of other rental properties in the municipality; and
- (7) the Town's level of assessment should be 1.26, rather than 1.23 as determined by the department of revenue administration (DRA).

Board's Rulings

Based on the evidence, the board finds the proper assessment to be the \$122,650 revised assessment calculated by the Town. Further, the board finds the Town's level of assessment to be 1.23, rather than 1.26 as argued by the Town. The board's decision will address these two

issues in that order.

Assessed Value

The Taxpayer testified the Property was disproportionately assessed for two reasons. First, the Property was for sale through a realtor for several years prior to its purchase, and the asking price was reduced over a period of time to the eventual selling price. Initially the Property consisted of three individual lots, two with improvements, all available for sale independently. However, after negotiations, the Taxpayer purchased the three distinct properties in one transaction for a single selling price and then merged the three into one economic unit. The Taxpayer testified the sale was not an especially “good buy” from the out-of-state owners as intimated by the Town. The Town testified the buyers were very knowledgeable real estate people who had vast experience in real estate transactions and, therefore, would not purchase the Property if it had not been a “good buy.” Although the board finds the Taxpayer’s testimony concerning the Property’s exposure on the market through a realtor for an extended period of time to be some evidence of the nature of the transaction, a question was raised by the Town, and left unanswered, that because the previous owners were from outside the state and had the Property on the market for a long period of time, some concessions may have been made, in both the selling price of each of the individual lots, as well as the opportunity to purchase them collectively. For this reason, the board gives the selling price some consideration, but does not find it necessarily conclusive evidence of the Property’s market value. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

Second, the Taxpayer introduced an appraisal, performed for financing considerations,

estimating the Property's market value as of April 15, 1997. It has been the board's experience that appraisals done for financing mortgages tend to be conservative because, as was the case in this instance, the appraiser knew the selling price of the Property and may have been influenced by it. The Taxpayer did not have the appraiser who performed the appraisal available for testimony and cross examination at the hearing. The board does note, as the Town pointed out, that the value estimated by the income approach (\$96,000), performed as part of the appraisal process, generally supports the revised assessment as proffered by the Town ($\$122,650 \div 1.23 = \$99,715$). The income approach performed by the appraiser used market rents in estimating the value of the Property, whereas the Taxpayer had utilized the contract rents. The Taxpayer's income analysis may have been an indication of the leased-fee value, rather than the market value, of the Property at the time of the purchase. The board agrees with the Town that it is more appropriate to use market data when estimating market value and the Taxpayer offered no rebuttal rental information to show that the contract rents were indeed indicative of the market. The board also notes the Taxpayer's appraiser used a very similar gross rent multiplier to estimate the market value by the income approach, and the variation in the estimates of market value was due primarily to the difference in the estimated rents. Further, as a basis for the higher rental values, the Town testified the Property's two units were substantially larger, 1,100 square feet (plus or minus) and 1,800 square feet (plus or minus), than typical rental units within the Property's market area. Additionally, the Property is located in an area that is predominantly single-family homes and this location would be more desirable than the locations of the majority of rental units in the Town. Also, the Property has a garage for under-cover parking and a substantially larger lot than is typical for most rental properties in the market area, and these

factors contribute to the higher estimated market rent for the Property.

Equalization Ratio

The Town argued the Department of Revenue Administration's (DRA) 1998 equalization ratio of 123% was not appropriate because it included an adjusted sale price for one property (sale verification # 33), and because DRA included one sale which had been renovated just prior to transfer without the assessment reflecting those renovations. The Town submitted a revised ratio study which indicated a median ratio of 123%, a mean ratio of 133%, and an aggregate ratio of 129%. The Town argued, considering all three ratios, an overall ratio of 126% was appropriate.

The board finds DRA's 123% median ratio most reasonably represents the general level of assessment. See Appeal of City of Nashua, 138 N.H. 261, 266-67 (1994).

An equalization ratio is a statistical measure of central tendency that describes the typical or general appraisal level. International Association of Assessing Officers, Property Appraisal and Assessment Administration 527 (1990) (hereinafter "Property Appraisal"). There are four such measures that are applicable to ratio studies: 1) the median; 2) the mean (also known as the average); 3) the weighted mean (also known as the aggregate); and 4) the geometric mean. Id. at 527. The geometric mean was not presented in evidence and, thus, the board will only address the remaining three measures.

The median ratio is the middle ratio when the ratios are arrayed in order of magnitude. The median has several advantages, especially because it discounts the effect of extreme ratios (also known as "outliers"). A possible disadvantage of the median is that it gives no added

weight to legitimate outliers.

The mean ratio is the average ratio (total of all ratios ÷ number of ratios). "The mean accurately reflects the full magnitude of every ratio, which is desirable only if outliers are based on valid data and occur with the same frequency in both the sample and the population. Outliers particularly affect the mean in small samples." Id. at 528.

The weighted mean is an aggregate ratio that is calculated by summing the assessed values, summing the sales prices, and then dividing the total assessed values by the total sales prices (total assessments ÷ total sales prices). "The weighted mean weights each ratio in proportion to its sale price, whereas the mean and median give equal weight to each sale price." Id. at 529. (The information in the preceding three paragraphs was taken from Property Appraisal at 527-530.)

Under New Hampshire law, all property must be assessed at the same level of assessment. Appeal of Andrews, 136 N.H. 61, 64 (1992). The court in Andrews stated there is only one equalization ratio for each municipality and that ratio must be applied to all properties even though that ratio is only the median or midpoint of all tax ratios in the town. Id. at 65.

The board finds the DRA's 123% ratio is the best indication of the level of assessments for several reasons: 1) both the DRA's ratio study and the Town's revised ratio study have a median ratio of 123%; 2) median ratios tend not to be influenced as much by outliers (sales indicating extremely high or low ratios), as mean ratios; see Appeal of Towns of Bow, Newington and Seabrook, 133 N.H. 194, 196-97 (1990); and 3) because of DRA's small sample size (24 sales used in its 1998 equalization analysis), outliers would have an even more significant effect on the mean ratio in this case. See Property Assessment at 528.

In short, while the board does not find the Town's adjustments to the two sales unreasonable, the resulting median ratio is the same as the DRA's ratio. Despite the mean and aggregate ratios being different from the median ratio, we do not find, for the reasons stated above, they should be given much weight in the determination of an overall ratio.

For the above reasons, the board finds the Taxpayer did not show the revised assessment was disproportionate to the general level of assessment within the Town. However, because the Town had not abated to the revised assessment, this decision orders the assessment to be \$122,650.

If the taxes have been paid, the amount paid on the value in excess of \$122,650 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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(a). 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(f). 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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Dawn L. Nyberg, Taxpayer; and Chairman, Board of Selectmen of Lisbon.

Date: April 28, 2000

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the “Taxpayer’s” Motion for Rehearing (“Motion”), which is denied. The Motion did not demonstrate the board erred in its decision and, thus, the Motion failed to show any good reason to grant a rehearing. See RSA 541:3.

The board reviewed the record in this case and finds the April 28, 2000 decision is clear and addresses most of the Motion’s arguments. 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 law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(f).

The Taxpayer cited two cases relative to selling price being an indication of market value. The board considered these two cases and concurs that if the selling price was derived in a fair market, as the court states, then it would be some evidence of market value. However, the

board

is not convinced the circumstances surrounding the Property's sale represent a fair market or arm's-length transaction.

The Taxpayer also questioned the board's treatment of the real estate appraisal submitted at the hearing. It is the board's experience that many appraisals performed for financing purposes are conservative in their estimate of value. Lending institutions want to minimize their risk or exposure, and while they do want to "make the deal," as the Taxpayer stated, they want to do it under favorable circumstances. A conservative estimate of value is one way lending institutions limit their risk.

The board considered all approaches to value and all information received from both parties in reaching their decision.

The Taxpayer's remaining arguments could have been made at the hearing, and as no new information was discussed that was not available at the time of the hearing, the board will not address those arguments further.

SO ORDERED.

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Dawn L. Nyberg, Taxpayer; and Chairman, Board of Selectmen of Lisbon.

Date: June 28, 2000

Lynn M. Wheeler, Clerk

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