Gary Lowe

v.

City of Portsmouth

Docket No.: 18144-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1999 assessment of $116,900 (land $54,800; buildings $57,700; yard items $4,400) on a 0.18-acre lot with a two-family dwelling (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the basement of the Property had significant water damage due to paving and sewer pipe conditions on the street maintained by the City (Taxpayer Exhibits 1, 2 and 4);

(2) a professional estimate of the total repair cost for the basement is $17,134 (Taxpayer Exhibit 1);

(3) this $17,134 cost should be deducted from the equalized assessed value of approximately $158,000 for the Property ($116,900 ÷ .74 equalization ratio for the City in 1999), resulting in a lower assessment;

(4) three comparable sales (Taxpayer Exhibit 4) also indicate a lower assessed value ($112,850); and

(5) the assessment-record card has inaccuracies in the factual data listing.

The City argued the assessment was proper because:

(1) the condition of the basement is reflected in the property condition of "fair" rather than "average";

(2) the City did not use the inaccurate room count shown in the assessment-record card in making its assessment but rather relied upon the correct area (square footage) of the Property;

(3) comparables submitted by the City (Municipality Exhibit D) indicate the Property was fairly assessed; and

(4) the Taxpayer failed to meet his burden of proof.

Board's Rulings

The Taxpayer failed to carry his burden of proof to establish the Property was disproportionately assessed.

At the hearing, the Taxpayer presented as Exhibit 1 a report from the H.L. Turner Group,

Inc. In the report was an analysis of the Property's water problem and photographs of the resulting damage. The analysis provided a cost to cure estimate of $17,134 to repair the foundation, floor and walls of the basement. The Taxpayer asserted an appropriate market value for the Property would be the current equalized assessment of approximately $158,000 minus the repair estimate of $17,134, or approximately $141,000. Multiplying this figure ($141,000) by the City's 1999 equalization ratio (.74) yields an indicated assessment of $104,250 (rounded).

Additionally, the Taxpayer provided the board with a letter and analysis from Joseph W. Nelson, a real estate broker (Taxpayer Exhibit 5). The broker's letter estimated the Property's market value, based on the three comparable properties, in the range of "between $150,000 and $155,000." The broker or the Taxpayer then took the mean of this range ($152,500) and multiplied it by the .74 equalization ratio to arrive at an estimated assessment of $112,850. As the City pointed out, this value is within 3½% of the City's assessment. The board finds that a 3½% difference is not unreasonable. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). Further, the broker's letter, while supplying three comparable sales, did not analyze whether other adjustments were necessary to the comparable sales' time-adjusted selling prices for possible dissimilarities between the Property and these sales. Further, the City's equalized assessment lies near the middle of the range of the three comparables sales. The realtor's estimate would have been more probative if adjustments to the

three comparables could have been explained and substantiated.

The board finds the City's assessment lies within this range of the broker's estimate of value, and therefore, it actually supports the assessment of the Property. The City also submitted comparables of its own (Municipality Exhibit D) to establish the Property was not disproportionately assessed.

Additionally, the board finds the Taxpayer's estimate of the cost to cure the problems caused by the water in the basement of the Property should have been compared to the value associated with any repairs made. Cost does not necessarily equal value, and therefore, money spent to repair a condition in the Property does not always have a one-to-one return in value. The Taxpayer presented no evidence of the relationship between the expenditures necessary to repair the water damage and any associated impact on value.

The Taxpayer's argument that incorrect factual data on the assessment-record card caused the assessment to be inaccurate is unsubstantiated. The Taxpayer raised concerns about certain factual errors on the assessment-record card. However, the Taxpayer did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). The City explained that, while there may have been some inaccuracies in the narrative description section on the assessment-record card, these were not factors considered in the calculation of the

assessment. It was based on the actual square footage of the Property along with adjustment for its condition.

For all the above reasons, the board finds the Taxpayer has not carried his burden of proof and the appeal is denied.

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

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Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Gary Lowe, Taxpayer; and Chairman, Portsmouth Board of Assessors.

Date: January 2, 2002

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Lisa M. Moquin, Clerk