

William L. and Deborah D. Boatwright

v.

City of Portsmouth

Docket No.: 19598-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2002 assessment of \$332,900 (land \$135,900; buildings \$197,000) on a 0.251-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) one of the Taxpayers, a certified appraiser, estimates the Property’s market value at \$275,800 based upon an estimated price per square foot of living area of \$175, which is consistent with the five comparable sales shown in the Taxpayers’ analysis;

- (2) the Taxpayers' five comparable sales are all single-family, ranch-style residences and are the most reliable indicators of value, and several of these sales are noted by the City to be comparables on certain assessment-record cards;
- (3) a May 14, 2003 appraisal performed for refinancing purposes estimates the Property's market value at \$306,000 which is consistent with the Taxpayers' market value estimate;
- (4) the comparable sales contained in the City's appraisal are not valid, its appraiser did not personally perform an interior inspection of the Property and he is not a licensed appraiser;
- (5) the City has overstated the quality of the home, which is average or just above average, and the home is in need of updating; and
- (6) a substantial abatement is warranted for tax year 2002.

The City argued the assessment, as adjusted below, is proper because:

- (1) an appraisal prepared for the City by Gordon W. Oakes estimates the Property's April 1, 2002 market value at \$330,000;
- (2) property values can vary greatly in the City due to location and neighborhood and the "South End," where the Property is located, is the second most valued area in the City;
- (3) the Property is unusual in this neighborhood because it is a post-World War II ranch-style home, situated among older-style homes;
- (4) a time adjustment of 1% per month was used in the City's analysis because of the substantial appreciation of property values that occurred;
- (5) the Taxpayers' appraisal performed for refinancing purposes provides a "conservative" estimate of the Property's market value, which is typical for this type of appraisal;
- (6) Mr. Oakes intended to perform the Property inspection himself but was unavailable and therefore relied upon the City Assessor who performed the actual inspection; and

(7) based upon its appraisal, the City believes the assessment should be abated to \$303,900 (\$330,000 market value estimate times the 92.1% level of assessment).

The parties agreed the level of assessment in the City was 92.1% for tax year 2002, the year the City-wide revaluation was completed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$253,300.

Assessments must be based on market value. RSA 75:1. Subsequent to the hearing, the board directed its RSA 71-B:14 review appraisers to review the parties' evidence and testimony, to inspect the Property and to provide a market value estimate. The board finds the best evidence of the Property's market value to be the \$275,000 opinion contained in the tax review appraisers' report (the "Report"). The review appraisers submitted the Report to the board on February 4, 2005, copying the parties. The parties were given an opportunity to comment on the Report. Neither party filed any written comments.

The City submitted an appraisal performed by Mr. Gordon Oakes that estimated the Property's market value at \$330,000. Mr. Oakes did not perform an interior inspection of the Property, but rather relied upon an inspection performed by the City's assessor, Ms. Lauren Elliott. Two competent appraisers can inspect and value the same property and arrive at different results based on their experience and judgment. In this case, it would have been proper for the person inspecting the Property to perform the appraisal. Ms. Eliot, the City assessor, could have performed the appraisal since she was the one who actually inspected the Property or Mr. Oakes could have rescheduled a more opportune time for him to personally inspect the Property if he was going to perform the appraisal. Because one of the fundamental differences between the parties' positions in this appeal is the grading of the dwelling, logic dictates that whoever

performed the appraisal should have inspected the dwelling's interior. For these reasons, the board gave lesser weight to Mr. Oakes' market value estimate.

The Taxpayers submitted an appraisal done for refinancing purposes that had an effective date of value of May 14, 2003. The board notes this date is approximately 13 months after the April 1, 2002 date of value in question in this appeal. As the Report notes, if the value estimate in the Taxpayers' appraisal of \$306,000 is time trended at a rate of appreciation of $\frac{1}{2}\%$ per month, the rate used by the Taxpayers' appraiser, the indicated value on April 1, 2002 would have been \$286,100. Based on its experience, the board finds the $\frac{1}{2}\%$ rate of appreciation applied in the Taxpayers' appraisal may be conservative and that 1% per month, used by the review appraisers, is a more accurate reflection of the rate of appreciation of residential properties in the City during the relevant time period.

It would not be appropriate to merely apply this revised rate to the Taxpayers' appraiser's value estimate without adjusting the sales comparison approach grid using the same factor. The board, therefore, adjusted the selling prices of the comparable sales in the grid at the rate of 1% per month. Using the remaining adjustments as determined by the appraiser as they are shown and weighting the sales equally, as it appeared the appraiser did, results in a revised value indication of approximately \$310,000. Trending this value estimate to the April 1, 2002 effective date of this appeal, a 13 month span, yields a market value of \$270,000. This number is slightly less than the board's review appraisers' estimate of \$275,000 and may be some support for Mr. Oakes' testimony that typically appraisals done for refinancing purposes may be "conservative" in their estimate of value. For this reason, the board gave the Taxpayers' refinancing appraisal lesser consideration, and relied primarily on the Report and its valuation findings.

In the process of determining the Property's market value, the review appraisers inspected the exterior and interior of the Property, as well as the comparable sales used by both parties in their sales comparison approaches to value. In addition, they reviewed additional sales not used by either party in order to ". . . assure the best comparables were relied upon."¹ In sum, the review appraisers' methodology is both more complete and consistent.

The board finds the Report to be the best evidence of the Property's market value on April 1, 2002. Therefore, adopting the Report's estimate of value of \$275,000 and the City's equalization ratio of 92.1%, the board finds the Property's assessment for April 1, 2002 should be \$253,300 ($\$275,000 \times 0.921$, rounded). The board has not allocated the value between land and buildings, and the City shall make this allocation in accordance with its assessing practices. RSA 76:11-a.

The Taxpayers have also requested "costs." See Taxpayer Exhibit 1 ("Opening Discussion"). TAX 201.39 authorizes an award of "reasonable" costs in appropriate cases, but requires itemization and documentation to support the request. The Taxpayers did not comply with this requirement. In any event, even if the Taxpayers had done so, the board is unable to find the City acted "frivolously" in this appeal, and therefore, the Taxpayers' request for costs is denied. See TAX 201.39(a) and (b).

If the taxes have been paid, the amount paid on the value in excess of \$253,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

¹ Report at page 4.

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(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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: William L. and Deborah D. Boatwright, 45 Marston Avenue, Portsmouth, New Hampshire 03801, Taxpayers; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, New Hampshire 03801.

Date: March 30, 2005

Anne M. Stelmach, Clerk