

David H. and Sharon Rimbach

v.

Town of Rye

Docket No.: 19726-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$230,500 (land \$121,400; buildings \$109,100) on a 27,775 square-foot 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) the garage, porch and living area are assessed higher on a per square foot basis when compared to similar properties;

- (2) the assessment is higher than properties in newer, renovated conditions;
- (3) overall, the assessment is not comparable to neighboring properties and is overassessed by approximately 12% to 15%; and
- (4) the Town's sale at 241 Washington Road is not comparable because of its proximity to the ocean.

The Town argued the assessment was proper because:

- (1) the Taxpayers have provided no data to establish a market value of the Property;
- (2) some of the concerns raised by the Taxpayers have been addressed in the Town's four-year cyclical reinspections where the valuation increases were made on certain properties;
- (3) three comparable sales were analyzed which supported a market value estimate of \$289,000; and
- (4) the assessed value is not excessive as shown by applying the 2002 ratio of 81.9% to the market value estimate ($\$289,000 \times .819 = \$236,691$).

Following the hearing, the board directed one of its RSA 71-B:14 review appraisers to perform an appraisal of the Property and file a report, copying the parties. Review Appraiser Cynthia L. Brown (Ms. Brown) filed a complete summary appraisal report ("Report") on August 11, 2005 and the parties were given 20 days to file any comments. Thus, in accordance with RSA 541-A:33, VI, the Report and the Taxpayers' comments are part of the record and considered by the board in its deliberations.

Board's Rulings

Based on the evidence, the board finds the 2002 market value of the Property was approximately \$265,000 and equates to an assessed value of \$217,000 by applying the 2002 ratio of .819. This estimate is based on the market value finding of \$280,000 contained in

Ms. Brown's Report modified (reduced \$15,000) to reflect the Property is in "average" to "slightly above average" condition rather than "good" condition for the reasons detailed below.

Market value is the basis of assessing property. RSA 75:1 states: "[t]he selectmen shall appraise... taxable property at its market value. Market value means the property's full and true value as the same would be appraised in payment of a just debt due from a solvent debtor." The procedure employed by Vision, the contract assessing firm that conducted the last reassessment, is the mass appraisal process that lists and attempts to estimate the contributory value of the various components of a property by using assessing "models" (land and building base rates) to arrive at an approximation of total market value. The board agrees with the Taxpayers that some of the Vision models are not consistent, such as the garage replacement cost values. That alone, however, is not adequate evidence to show that the overall assessment was disproportionate. Porter v. Town of Sanbornton, 150 N.H. 363 (2003) (a finding of flawed methodology in the town's assessment procedures does not, in and of itself, lead to a finding of disproportionality). The Town did note, however, that the assessments for garages and other discrepancies were corrected in subsequent year assessing updates.

Consequently, the board's ordered abatement is not based on the methodology discrepancies argued by the Taxpayers, but rather on market value evidence submitted as part of the record. The record contains two estimates of market value: 1) the Town's estimate of \$289,000 contained in the sales comparison analysis in Exhibit A; and 2) the review appraiser's Report estimate of \$280,000 also based on a sale comparison analysis.

While the Town's analysis is based on three of the same four comparable sales utilized in the Report, the board gives little weight to the Town's value conclusion because the adjustments to the comparable sales are a mixture of assessment record card derived adjustments and market value adjustments with no explanation of why one is utilized rather than another. For example,

the Town adjusts for “size” based on assessment model differences shown on the assessment record cards (except for the 241 Washington Rd. comparable which was adjusted for \$55,000, significantly less than the equalized difference in the land assessed values) but for “location” no adjustments are made despite the assessment record cards showing some neighborhood distinctions. Also the “building style” receives no adjustment in the sales comparison grid, yet on the assessment record cards there is a significant difference between the “century+” building style classification and the “cape cod” designation of two of the three comparables (base rates of \$85 and \$65 respectively).

The board finds the best evidence of the Property’s market value is contained in the Report. The Report contains an appraisal of the Property by the comparable sales approach which involved reviewing the sales of comparable properties and adjusting the sale prices to arrive at indicated market value estimates of the Property. The board finds the analysis is reasonable but based on the evidence contained in the Taxpayers’ August 28, 2005 response to the Report relative to the age of the Property’s roof and septic, the Taxpayers’ testimony at the hearing as to the dated and unrenovated condition of the interior and the descriptive listings on the assessment record card, the board concludes the Property’s overall condition to be “average” or “slightly above average” rather than good. Based on the condition adjustments made on page 14 of the Report, this lower condition notation warrants a reduction of approximately \$15,000 from the review appraiser’s conclusion of \$280,000.

If the taxes have been paid, the amount paid on the value in excess of \$217,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Sharon H. Rimbach, 731 Washington Road, Rye, New Hampshire 03870, Taxpayers; and Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, New Hampshire 03870.

Date: October 12, 2005

Anne M. Stelmach, Clerk

David H. and Sharon Rimbach

v.

Town of Rye

Docket No. 19726-02PT

ORDER

On October 17, 2005, the “Town” filed a Motion for Reconsideration (“Motion”) of the board’s October 12, 2005 decision (“Decision”).

The Motion is denied because it did not demonstrate the board erred in its Decision and, thus, failed to show any “good reason” to grant a rehearing. See RSA 541:3. In its Motion, the Town argued the board arbitrarily arrived at a decision distinct from its review appraiser’s report (Report) or the Town analysis. The board finds it adequately addressed the reasons it did not accept either the evidence of the Town or the Report in their entirety as detailed on pages 3 and 4 of the Decision. The board weighed the differing opinions and drew its conclusions based on a thorough analysis of all the evidence submitted including the Taxpayers’ testimony as to the condition of the Property. Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (In arriving at findings of fact that do not exactly correspond to either party’s evidence, but are within the parameters of the conflicting evidence submitted, the board merely employs its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge” in evaluating the evidence before it.).

The process of arriving at market value and, thus, arriving at a proper assessment, is one which will not always achieve an absolute single answer. Rather the board must evaluate the evidence and determine the best indication of value based on the most relevant facts presented.

Pursuant to RSA 541:6, any appeal of this Order by the Town to the supreme court must be filed within thirty (30) days from the date of this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David and Sharon H. Rimbach, 731 Washington Road, Rye, New Hampshire 03870, Taxpayers; and Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, New Hampshire 03870.

Date: November 16, 2005

Anne M. Stelmach, Clerk