Mohammad M. and Michelle E. Islam

v.

Town of Merrimack

Docket No.: 19866-02PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2002 assessment of $409,400 (land $110,200; buildings $299,200) on a 2.3427-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) a portion of the Property is in the 100-year flood plain precluding any expansion of the dwelling as well as restricting where the dwelling could be constructed; and

(2) based on an extensive analysis, too detailed to summarize, of all factors affecting the Property, its April 1, 2002 market value is $378,000.

The Town argued the assessment was proper because:

(1) after the Taxpayers filed an abatement application following the Town's 2002 update of values, the assessment was reviewed and reduced from $424,900 to $409,400; and

(2) no further abatement is warranted.

Following the hearing, the board directed its RSA 71-B:14 review appraiser to review the file, listen to the taped recording of the hearing and to perform an independent estimate of the Property's market value. After the review appraiser, Ms. Cynthia L. Brown, filed her report ("Report"), the parties were given an opportunity to comment on it. The parties submitted their written comments and, in accordance with RSA 541-A:33, VI, the Report and the parties' comments are part of the record and have been considered by the board during its deliberations. The board considers the Report another piece of evidence and may adopt or reject, in whole or in part, any portions of it. The board is not bound by the review appraisers' findings.

Board's Rulings

The board finds the proper assessment to be $381,600 based on a market value finding of $400,000 and the Town's median level of assessment of 0.954.

The Taxpayers and the Town submitted extensive documents and provided supporting testimony for their respective positions. The board recognizes the amount of effort both parties applied to this case.

Assessments must be based on market value. RSA 75:1. Based on a thorough review of all the evidence and testimony presented, the board finds the best evidence of the Property's market value to be the Report with some minor modifications. Although the board's estimate of market value is the same as that opined in the Report, the board arrived at its determination in a slightly different manner.

The board agrees with the Taxpayers that the comparable sale located at 3 Klara Drive is most similar to the Property. The review appraisers also considered this sale most comparable to the Property and gave its value conclusion the most weight (Report at p.15). The 3 Klara Drive property is located on the same street as the Property and sold December 18, 2001, less than four months prior to the effective date of this appeal. The board has reviewed the Report's comparable sales adjustment grid (Report at p. 14) and, while the board generally agrees with the Report's analysis and adjustments, has made some modifications to the grid to more properly reflect the differences between the comparables sales and the Property.

The first adjustment was made to the gross living area factor. The board concurs with the Taxpayers that it is more appropriate to adjust each sale for the differences in total gross living area rather than to adjust for only differences greater than 250 square feet. Therefore, the board has applied the Report's $77 per-square-foot adjustment to the entire difference in square footage between the comparables sales and the Property. This resulted in a -$17,250 adjustment to Comparable Sale #1 ($77 x 224 square feet) and a -$400 adjustment to Comparable Sale #2 ($77 x 5 square feet).

The next adjustment the board made was to Comparable Sale #1 regarding its two-car garage and paved driveway. The Report made an inappropriate -$9,000 adjustment and the board has removed that adjustment as both the Property and Sale #1 have these features in common. Another adjustment the board reviewed was for the topography on Comparable Sale #3. The board finds the 10% adjustment applied in the Report should be reduced to 5% to recognize the fact there are some topographical differences, but not of such a magnitude to warrant a 10% adjustment. This change results in the value indicated by Comparable Sale #3 being increased by $17,500.

The last revision the board made to the Report's grid was to add $7,500 to each comparable sale to capture the contributory value of the Property's attic and redundant heating system. This adjustment was based on the board's experience rather than a specific calculation. While these features certainly cost more than $7,500 to construct, the board concludes the market would recognize some contributory value rather than none as the Report grid noted.

As the parties should note, these adjustments result from the board considering and weighing the evidence at hearing, the Report and the parties comments to the Report, and applying the board's experience to the body of sometimes conflicting evidence. RSA 71:B-1; RSA 541-A:33, VI. Appeal of City of Nashua 138 N.H. 261, 264-65 (1994).

Making the previously discussed adjustments result in an indicted value for the Property based on Comparable Sale #1 of $390,650; Comparable Sale #2 of $416,800; Comparable Sale #3 of $393,000; and Comparable Sale #4 of $431,200. A review of the comparability of each of the sales leads the board to find that, as stated by the Report, Comparable Sale #1 is most similar to the Property with the other three sales lending support for the value estimate. Therefore, the board has weighted the sales and given 70% to Sale #1 and 10% to sales # 2, #3 and #4. Using these weighting factors, the board finds the Property's market value to be $397,555 (rounded to $400,000) based on the following table.

Comparable Sale	**Indicated Value**	**Weighting**	
#1	$390,650 x	0.70 =	$273,455
#2	416,800 x	0.10 =	41,680
#3	393,000 x	0.10 =	39,300
#4	431,200 x	0.10 =	43,120
Total			**397,555 (rounded to $400,000)**

Using the $400,000 market value figure and the Town's 2002 median level of assessment of 0.954 yields an appropriate assessment of $381,600 ($400,000 x 0.954). The board has not allocated the value between land and buildings, and the Town shall make this allocation in accordance with its assessing practices. RSA 76:11-a.

If the taxes have been paid, the amount paid on the value in excess of $381,600 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, <u>not the date this decision is received</u>. 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mohammad M. and Michelle E. Islam, 10 Klara Drive, Merrimack, New Hampshire 03054, Taxpayers; and Chairman, Board of Selectmen, Town of Merrimack, Post Office Box 940, Merrimack, New Hampshire 03054.

Date: July 18, 2005

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Anne M. Stelmach, Clerk