Daniel Bogannam

v.

City of Portsmouth

Docket No.: 20662-04PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2004 assessment of $542,400 (land $313,900; building $228,500) on Map 207/Lot 46, a property consisting of 0.28 acres improved with a 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, 138 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) a settlement agreement in the amount of $484,900 for tax year 2003 (Taxpayer Exhibit No. 2) was signed by the Taxpayer's agent at the time, Christopher Snow ("Mr. Snow"), and the City's Assessor, Lauren J. Elliott ("Ms. Elliott");

(2) the City did not perform a city-wide reassessment in 2004 and, therefore, the value agreed to for tax year 2003 should carry forward;

(3) an appraisal prepared by Vern J. Gardner, Jr. estimated the Property's April 1, 2002 market value to be $430,000 (the "Gardner Report");

(4) a neighborhood waterfront comparison by 2004 assessed values (Taxpayer Exhibit No. 1) indicates the City only made adjustments (from 2003 to 2004) to properties that were new or renovated; and

(5) Taxpayer Exhibit No. 1 also indicates four properties which sold subsequent to the Taxpayer's settlement date of December 21, 2004 so they should not be considered in the 2004 assessment.

The City argued the assessment was proper because:

(1) two settlement agreements were executed by Mr. Snow and Ms. Elliott on December 21, 2004: the first to settle tax year 2002 for $452,600 and the second to settle tax year 2003 for $484,900; no provisions were made in either settlement agreement for subsequent years and the fact the settlement for 2003 was higher than 2002 is supportive of the appreciating real estate market during the period;

(2) the Property was proportionately assessed compared to similarly situated waterfront properties;

(3) the Taxpayer's appraisal report had an effective date of April 1, 2002 which would at least need to be updated for market conditions (time) at approximately 12% to 18% per year;

(4) the Property sold in October 2005 for $970,000 after typical exposure on the open real estate market; and

(5) waterfront properties in the City, in general, are underassessed and no adjustment to the Property's assessment is warranted.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer's main argument focused on the 2003 settlement agreement executed by his agent, Mr. Snow, and the City's assessor, Ms. Elliott. The Taxpayer also submitted, as part of Taxpayer Exhibit No. 2, a settlement agreement signed by the same parties for tax year 2002. The agreed upon assessment for tax year 2003 was approximately 7% higher than that agreed to for tax year 2002 which appears to indicate both Mr. Snow and Ms. Elliott acknowledged the real estate values increased over that period of time. The Gardner Report also indicated the market was "appreciating annually at 12%."

Tax 201.23(b) states:

All settlement agreements, except those made on the record or recited in an order, shall:

(1) Be in writing, describing the agreement's material terms; and

(2) Be signed by both Parties or their attorneys, Agents or Municipal Consultants.

Tax 201.23(c) states:

> In Property-Tax Appeals, the settlement agreement shall state the agreed-upon assessment and the year(s) for which the assessment shall apply. The Board shall reject any settlement of a Property-Tax Appeal if the settlement would result in disproportionate, illegal, fraudulent or unfair assessment or taxation.

It is clear from Taxpayer Exhibit No. 2 the two settlement agreements were specific to tax years 2002 and 2003. As the rules require, if the intent was for the 2003 agreed upon assessment to apply to subsequent years, the settlement agreement should have stated not only

the agreed upon assessment but the years for which it applied. The settlement agreement merely indicated the docket should be marked as "Case settled, no further action, no costs to either party." Therefore, the board finds the Taxpayer's argument the 2003 settlement agreement should carry forward to tax year 2004 has no merit.

The Gardner Report estimate of value was as of April 1, 2002 and Mr. Gardner indicated real estate values were increasing at approximately 12% annually (somewhat consistent with the City's testimony that the market had increased between 12% and 18% annually). The board finds this report to be of little value in determining the market value of the Property as of April 2004 because Mr. Gardner's comparable sales sold between March 2000 and August 2002, two to four years prior to the date of assessment. Taxpayer Exhibit No. 1 depicted sales that occurred in the same neighborhood from September 2003 through October 2004 which would be more indicative of waterfront values as of the assessment date. However, the board was unable to place any weight on Taxpayer Exhibit No. 1 because no evidence was presented for the board to analyze to determine the comparability of these properties (i.e., assessment-record cards, descriptions of the properties, nature of the sales, etc.).

For the board to accept the Taxpayer's claim of a $484,400 assessed value as of April 1, 2004 would be to accept an indicated market value as of that date of $551,000 ($484,400 divided by 2004 equalization ratio). Specifically, the Property was sold for $970,000 in October 2005. Accepting a 2004 market value of $551,000 would indicate the Property's value increased by 57% in an 18 month period. The evidence simply does not support such a claim. Therefore, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and denies the appeal.

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

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Michele E. LeBrun, Member

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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: Daniel Bogannam, 17 Eldredge Road, Eliot, ME 03903, Taxpayer; and City of Portsmouth, Chairman, Board of Assessors, 1 Junkins Avenue, Portsmouth, NH 03801, Municipality.

Date: January 11, 2008

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Anne M. Stelmach, Clerk