Lillian P. Newcombe Revocable Trust

v.

City of Concord

Docket No.: 21016-04PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2004 assessment of $552,800 (land $156,300; building $396,500) on Map 98/3/36, a single-family dwelling on 8.37 acres (the "Property").

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in 1995 for $430,000 which was a premium over the appraised value of $400,000 at that time;

(2) the roof covering is largely original slate with some areas of asphalt shingles and is in need of repair. An estimate from The Melanson Company, Inc. (Taxpayer's Exhibit No. 3) estimated the repair's would cost $147,000 if the covering is replaced with slate or $87,000 if replaced with asphalt shingles;

(3) the house has 44 original single pane windows with storm windows which would cost $50,000 to $60,000 to replace;

(4) the house is heated with an old one zone steam heating system at a cost of $8,000 to $10,000 annually;

(5) the electrical system, while having had some circuit breakers installed, is largely comprised of old wiring;

(6) the basement is wet due to the old type foundation and the poor grading and drainage that occurred at the time of construction;

(7) the septic system and well are not up to code;

(8) the landscaping is extensive and requires a high level of maintenance;

(9) several comparable properties indicate both the land and buildings are disproportionately assessed (Taxpayer Exhibit Nos.: 5-7); and

(10) between $300,000 and $400,000 would need to be spent to cure all the deficiencies noted and thus the market value has not increased above the purchase price of $430,000.

The City presented no evidence but rather at the conclusion of the Taxpayer's presentation made a motion to dismiss the appeal due to the Taxpayer not having carried its burden. The board after recess and deliberation granted the City's motion for the following reasons.

Board's Rulings

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.

The parties stipulated the City's 2004 level of assessment was reasonably indicated by the 93.9% median ratio estimated by the department of revenue administration. The Taxpayer, however, did not present any credible evidence of the Property's market value. To carry its burden the Taxpayer should have made a showing of the Property's market value. This value would have then been compared to the Property's assessment and the general level of assessment within the City. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Further, "in an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). See also, Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

Here, the Taxpayer presented no credible evidence of the Property's market value and thus, did not meet the standard of proving by a preponderance of the evidence the Property was disproportionately assessed.

The Taxpayer's evidence breaks down into three general categories: 1) discussion of the Taxpayer's purchase of the Property for $430,000 in November, 1995; 2) a litany of physical and functional aspects of the Property that warrant a lower assessment; and 3) submission of the assessment-record cards for three properties the Taxpayer asserts are assessed differently than the Property.

The Taxpayer's purchase price of the Property is too distant to be a reliable indication of market value for 2004. The nine intervening years generally saw a substantial increase in real

estate values both statewide and citywide.[1] Even considering the number of physical and functional issues with the Property, the board finds it is unreasonable to conclude the Property's market value did not change during those nine intervening years when properties in general saw substantial market appreciation. Comparing the City's equalized assessed value of $588,711 ($552,800 divided by 0.939) with either the purchase price of $430,000 or the 1995 appraised value of $400,000 contained in Taxpayer's Exhibit No. 2 indicates a 4-5% annual market appreciation during those intervening years. The board finds such market appreciation is, if anything, modest relative to the general market conditions during that time period.

The numerous physical and functional deficiencies detailed in the appeal document and testified to at the hearing alone do not prove by the preponderance of evidence the Taxpayer is disproportionately assessed. While the board does not doubt the existence of those issues as substantiated by various exhibits and photographs contained in the appeal document, the Taxpayer made no showing as to how those deficiencies affected the Property's 2004 market value. Further, the Property's assessment-record card reflects the existence of a number of these physical and functional conditions which apparently had been brought to the City's attention during the various abatement requests. The assessment-record card shows the City depreciated the dwelling 41% for physical and functional items (including the wet basement and the old heating system as identified in the "notes" section) and had applied an additional 10% "special condition" reduction for unspecified reasons although it appears related to many of the physical conditions testified to by the Taxpayer. Thus, there is evidence before the board that the City's assessment accounted for these physical aspects of the Property in arriving at its assessed value.

[1] While no specific evidence was submitted as to market appreciation, the board's "experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence." RSA 541-A:33, VI.

The situation here is different than in Sokolow where the assessments of the dwellings on appeal did not reflect the lack of completion and the absence of certificates of occupancy. In Sokolow the supreme court noted the board had review appraisers that could offer an opinion as to the amount of market reduction for those incomplete items. Here the facts are different in that the City has adjusted the value of the dwelling for its opinion of the affect on market value of the issues with the dwelling but the Taxpayer disagrees with the resulting value. On appeal, the Taxpayer's burden is more than simply reciting those deficiencies; rather the Taxpayer needed to present credible evidence as to how the market value is impacted differently than that estimated by the City. The Taxpayer presented no such evidence.

Further, upon questioning, Mr. Newcombe, representing the Taxpayer, testified that since the 1995 purchase, both chimneys had been reworked from the roof line up and new valleys and flashing had been installed on the roof. He also testified the prior owner, before selling the Property in 1995, had done general remodeling work to the interior of the house including "cleaning" floors, painting, etc. The prior owner had also done extensive landscaping, redone the porch, re-roofed the asphalt shingles and added a deck. This prior owner's work likely led to the 1995 appraisal (Taxpayer's Exhibit No. 2) to note "the subject property has been remodeled recently and is considered to be in very good condition." This general testimony indicates the house, while still having physical and functional deficiencies, has had significant work done to it just prior to and subsequent to its acquisition in 1995. As a consequence, the board concludes the City's assessment appears to try to strike the market value balance between work that has been done to the Property and the remaining work yet to be done.

The Taxpayer also noted the assessment-record card contains some inaccuracies as to the physical listings of the Property such as it having four bedrooms rather than five, two full bathrooms and two half bathrooms rather than three and one-half bathrooms, a living area of 4,519 square feet rather than 4,698 square feet, only one porch rather than two and only one garage rather than two separate garages. The board's review of the assessment-record card indicates only one garage was noted on the building sketch and assessed in the building calculations and the two porches include the main 14 x 20 screened porch and the small 5 x 8 entry in the front of the house clearly shown in the photographs in Taxpayer Exhibit No. 1. The assessment added for five bathroom fixtures (total of ten with five being in the "base rate") which is the number of additional fixtures for either 3.5 bathrooms or 2 full and 2 half bathrooms. Further, the difference in living area square footage is nominal and no evidence was submitted as to how that affects market value. (Notwithstanding any errors of law or fact pertaining to how an assessment was made, justice requires that an abatement only be made following a showing by the taxpayer that the assessment is disproportionate relative to market value and the general level of assessment. See Porter at 368.)

The Taxpayer presented Exhibit Nos. 5-7, the assessment-record cards of properties at 233 and 314 Hopkinton Road and 18 Second Street to establish the City had treated the assessment of the Property differently than other similar properties. The board finds such exhibits again do not establish a market value benchmark but only establish there are differences in how those properties were assessed. As noted during the hearing, such differences can be for legitimate market related reasons or point to the fact either the compared properties are under

assessed or the subject Property is over assessed or some of both. However, it does not establish by the preponderance of evidence that the Property is disproportionately assessed.

So as to be clear, in reaching its conclusion to grant the City's motion to dismiss, the board did not consider or give any weight to the "Strachan – Murphy" appraisal contained in the City's prehearing statement that is part of the file but not presented or testified to at hearing. As noted from the bench, the board's determination to grant the motion to dismiss was based on evaluating the evidence submitted by the Taxpayer as to whether it met the taxpayer's burden to show by the preponderance of the evidence the City's assessment was disproportionate. As part of that evaluation, the board also reviewed the City's assessment-record card to determine whether the City had reasonably accounted for the physical issues raised by the Taxpayer. In finding the assessment did address those issues, the assessment is entitled to the presumption of correctness that was not overcome by the Taxpayer because it did not submit any market evidence showing how the City's accounting was inappropriate relative to market value.

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: Simon C. Leeming, Esq., Preti Flaherty Beliveau & Pachios PLLP, 57 North Main Street - PO Box 1318, Concord, NH 03302-1318, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: February 6, 2008

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Anne M. Stelmach, Clerk