Loren and Dan Martin

v.

City of Concord

Docket No.: 22316-05PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 2005 assessment of $373,000 (land $114,100; building $258,900) on Map 88/Lot 2/15, a single family home on a 2.96-acre lot (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers[1] argued the assessment was excessive because:

(1) a review of the assessments of similar properties in the Taxpayers' neighborhood indicates the Property is not equitably assessed;

[1] The case was presented by one of the Taxpayers, Loren Martin, who regularly appears before the board as Vice President of Avitar Associates of New England ("Avitar") defending assessments done by Avitar for municipalities under contract. Gary Roberge, President of Avitar, also was present and testified.

(2) the City's annual updates have created disproportionate assessments with "pockets of errors" in some neighborhoods and demonstrate a flawed methodology;

(3) the total price of $375,000 the Taxpayers paid for the Property in 2004 is not necessarily reflective of its market value because "cost" does not always equal "value" in newly constructed homes; and

(4) the Property's assessment should be $333,900 based on the purchase price and the City's 2005 general level of assessment ($350,000 x 0.954 = $333,900).

At the close of the Taxpayers' presentation, the City made a verbal motion to dismiss the appeal because the Taxpayers had not carried their burden in presenting market evidence to establish disproportionality. The board took the motion under advisement and the City then argued the assessment was proper because:

(1) an analysis of comparable sales (Municipality Exhibit No. A) indicates the assessment may be slightly low and the Property is not overassessed;

(2) the Taxpayers did not present any market value evidence to support their position;

(3) the Taxpayers' analysis using the assessed values of other properties in their neighborhood is not probative evidence the Property is disproportionately assessed; and

(4) the analysis in Municipality Exhibit No. D shows the Property's assessment is in the low end of the range of assessed values on a per square foot basis compared to other similar properties in its neighborhood.

The parties stipulated the level of assessment in the City was 95.4% based on the department of revenue administration's ("DRA") 2005 median ratio.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden and therefore the appeal is dismissed for the following reasons.

The New Hampshire Constitution's requirement in pt. II, art. 5 that assessments be "proportional and reasonable" is achieved if assessments are proportional to market value. See RSA 75:1. To succeed on a tax abatement claim, a taxpayer has the burden of proving by preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which the property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

The appealed assessment of $373,000, when equalized by the stipulated ratio of 95.4%, results in an indicated market value of $390,985. While the Taxpayers presented evidence that the board will discuss in the following paragraphs that select properties, particularly in their neighborhood, were assessed at a different level, they failed to show, relative to market value, their property was disproportionally assessed.

The Taxpayers purchased the Property from the builder, Constitution Builders, LLC, in September, 2004, six months before the assessment date of April 1, 2005, for $350,000. The Taxpayers separately, by cash, paid the builder $10,000 for upgrades to the flooring and by financing $15,000 for upgrading the kitchen above the contracted price of $350,000. Thus, the total purchase price paid for the Property was $375,000. The Taxpayers argued, in this case, cost does not equal value because the cost of the upgrades, particularly the flooring, would not be captured in the market on resale. No evidence was submitted by the Taxpayers such as resales of earlier constructed properties to support this assertion. Moreover, it is the board's experience

that the upgrades described by the Taxpayers, including hardwood and tile floors and upgraded kitchen cabinets, are generally recaptured when good quality property, in desirable locations, such as the Property, are resold. While the board recognizes the sale price of any property may not necessarily be conclusive evidence of its market value, the board has discretion to evaluate and determine the credibility of the sale price as being indicative of market value or not. See Society Hill of Merrimack Condo Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). No evidence was submitted to support the Taxpayers contention that the sale price exceeded market value and, in fact, the sales of other properties in the neighborhood, when adjusted for the change in market conditions and physical features, indicate the total sale price was generally representative of market value. (In particular, the September 2004 sale of 56 Birchdale Road, which is very similar to the Taxpayers' Property, for $382,700 also indicates the Taxpayers' purchase of the Property was at market value.) Thus, as in this case, where the board determines the Property's sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The Taxpayers also argued the City's appraisal's (Municipality Exhibit No. A) estimate of an April 1, 2005 market value of $400,000 was high due to the 10% time adjustment applied to the sales utilized. To test the reasonableness of the City's market adjustment, the board reviewed the average selling price of all residential properties that transferred in Concord between April 1, 2004 and March 31, 2005 as reported by Northern New England Real Estate Network ("NNEREN"). The average residential sale price in Concord, on an annualized basis, increased approximately 8% during that time period. Consequently, we conclude the City's 10%

time adjustment is a reasonable estimate of the market appreciation occurring from late 2003 through early 2005.

The Taxpayers' primary argument, was that relative to other properties, primarily in the Birchdale Road neighborhood, the Property was assessed higher. The City in Municipality Exhibit No. B attempted to show the Taxpayers' comparables were not assessed that differently by performing an assessment to sale ratio study that had median and mean ratios of 98% and 97% respectively, similar to the City-wide level of assessment of 95.4%. We find the City's ratio study of the Taxpayers' comparables is misleading because it did not adjust the sale prices for the change in market conditions. (See International Association of Assessing Officials, Standard on Ratio Studies – 2007, Standard 4.4.) As the board noted during the hearing and subsequently calculated, if those sale prices are time adjusted utilizing the City's 10% annual factor, the resulting median/mean ratios are 89% and 90% respectively supporting the Taxpayers' contention that many of the neighborhood properties were assessed below the City-wide level of 95.4%. That conclusion, however, does not warrant an abatement. As noted in the earlier cited cases, the benchmark for determining disproportionality is whether the Taxpayers' Property is overassessed relative to its market value and the City's 95.4% level of assessment. The fact that other similar properties in the Taxpayers' neighborhood appear to have been assessed at a lower level does not make the Taxpayers' assessment disproportionate. To reduce the Taxpayers' assessment to a level of assessment similar to some of their neighbors below the City-wide level of 95.4% would result in the Property "being taxed at a level disproportionality [lower] in relation to its true value than is other property in [Concord]." Appeal of Andrews, 136 N.H. 61, 65 (1992). "In order to achieve proportionality all taxpayers must be assessed at the same ratio." Id. at 64. The remedy for variability of assessments of similar properties is not to

abate the high one that is proportionate to market value; rather the remedy is for the assessing officials to correct the assessments of properties that are underassessed "so that all assessments are reasonably proportional within that municipality". RSA 75:8.[2] This concept is so clearly addressed in the statutes and a long line of case law, it is perplexing that Ms. Martin, with her assessing experience, would challenge it.

Last, the board understands the City performs annual updates by adjusting assessments by property strata or neighborhood to attempt to keep them proportionate to market value. Such endeavors are to be encouraged and are in keeping with RSA 75:8. The results of these annual assessment updates and the overall equity produced is evident in the assessment statistics calculated by DRA for 2005, 2006 and 2007 as presented in Municipality's Exhibit No. E. Nonetheless, the board would encourage the City, if it has not already reviewed the assessments in the Birchdale neighborhood, to ensure in its 2008 update they are all as proportional to market value as possible. While the City did not state it has already reviewed the Birchdale neighborhood, the evidence submitted tends to indicate it has. The "summary by land neighborhood" analysis dated 06/12/2008 presented as part of Municipality Exhibit No. E indicates the analysis of the land neighborhood with index number 0103, in which the Property and the Birchdale neighborhood is located, had a median ratio of 97% and a coefficient of dispersion of 5.01% for that strata. This indicates to the extent there may have been some "pockets of errors", as asserted by the Taxpayers, they appear to have been recognized and corrected by 2008.

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[2] Further, the legislature has provided two other venues for taxpayers to seek remedy of perceived underassessment of others or municipal-wide inequities. Individual taxpayers can file a written complaint with the board pursuant to RSA 71-B:16, I if they believe another property is "fraudulently, improperly, unequally or illegally assessed." Also pursuant to RSA 71-B:16, IV, 50 or more taxpayers can file a petition with the board seeking a reassessment order to address more municipal-wide inequities.

For all these reasons the board finds the Taxpayers failed to carry their burden and the appeal is dismissed.

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(g). 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: Loren and Dan Martin, 60 Birchdale Road, Concord, NH 03301, Taxpayers; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: 7/18/08

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Anne M. Stelmach, Clerk