Theriault Trust

v.

City of Berlin

Docket No.: 22573-06PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2006 assessment of $113,900 (land $10,200; building $103,700) on Map 119/Lot 513, a single family home on 0.110 acres (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) better properties in the City were selling for less than the Property's assessed value;

(2) an independent appraisal estimated the Property's market value at $82,000 on April 1, 2006;

(3) the City's comparables in Avitar's letter are very vague and are not truly comparable; and

(4) the assessed value should be reduced based on the appraisal's market value estimate.

The City argued the assessment was proper because:

(1) the appraisal is flawed and its market value estimate is unreliable;

(2) an analysis performed by the City supports the assessment;

(3) the assessor inspected the Property on at least two different occasions to insure the factual data on the assessment-record card is accurate; and

(4) the Taxpayer has not carried its burden of proof.

At the hearing, the City testified the general level of assessment it used in 2006 was the median ratio of 97.4% as determined by the department of revenue administration. The Taxpayer did not dispute this ratio.

Board's Rulings

The board finds the Taxpayer did not carry its burden and failed to prove the Property was disproportionately assessed.

The Taxpayer based its argument for abatement primarily on an "Appraisal" performed by Mr. Robert J. Goddard, a New Hampshire Certified Residential appraiser (NHCR-200). Mr. Goddard estimated the Property's market value on April 1, 2006 to be $82,000. The City, represented by Mr. David Woodward of Avitar Associates of New England, the City's contracted assessing company, disputed the reliability of the Appraisal and its estimate of the Property's market value because the comparable sales employed by the appraiser were either not similar or not qualified, arm's-length transactions. Because the Taxpayer based its appeal on the Appraisal, the board will review each of the comparable sales in it separately.

The City testified comparable sale #1 at 59 High Street was actually a relocation sale after being completely renovated. In addition, there were two sale prices for this property, $165,000 and then

$115,000, listed and recorded on the same day, October 24, 2005, at the registry of deeds. These facts raise questions as to whether this transfer was truly an arm's-length transaction.

Comparable sale #2, which sold for $75,900 in May of 2005, was a different style home but, more importantly, was located adjacent to a school zone, a much different neighborhood. Mr. Woodward testified that being located near a school zone had a negative impact on property values in general. To account for this comparable sale's school zone location a minus 20% adjustment was applied. He further testified this adjustment was consistently given to all other properties in the City with this locational characteristic.

The City stated sale #3 was a multi-family home which would attract a very different market of potential purchasers and could not be considered "comparable." The board agrees.

Similarly, sale #4 was also a multi-family dwelling located on a truck route through the City. For the previously discussed reasons, this sale can not be considered comparable.

Comparable sale #5 was a unique home in as much as it was a 1½ story brick residence with no off street parking which was vacant at the time of its sale. No discussion or adjustments for these factors was found in the Appraisal.

The City testified comparable sale #6, located diagonally across the street from the Property, sold for $58,000 rather than the $62,000 listed in the Appraisal and needed kitchen, plumbing and electrical updates after the sale. The appraiser did not address these specific conditions in the Appraisal.

The board finds the Appraisal contains extensive but very generic text about the real estate market in and around the City. The Appraisal contains little, if any, specific information about the individual sales utilized nor does it answer any of the questions raised by the City. The appraiser, Mr. Goddard, did not appear as a witness for the Taxpayer at the hearing. For all the reasons previously discussed, the board could not give the Appraisal much credence during its deliberations.

In support of the assessment, the City submitted an analysis, Municipality Exhibit A, comparing the Property to three similar properties located in the City. The City's assessor testified he visited the Property on at least two occasions and the factual data was extensively reviewed with the owner. The Taxpayer did not dispute the factual data. The three comparable sales used by the City in its analysis were all single family residences of similar age, quality and condition as the Property. Further, Mr. Woodward testified the adjustments made for differences in the number of bedrooms or bathrooms were consistently made to all properties in the City and the resulting estimate of value from the City's analysis supports the assessment. The Town's testimony that the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board finds, after reviewing all the submissions and the parties' testimony, the City's analysis supports the finding that the Property is not disproportionately assessed and no abatement is warranted. The appeal is therefore denied.

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

_____
Michele E. LeBrun, Member

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert and Eveline Theriault, Trustees, Theriault Trust, 137 Jolbert Street, Berlin, NH 03570, Taxpayer; Chairman, Board of Assessors, City of Berlin, 168 Main Street, Berlin, NH 03570; and David S. Woodward, Avitar Associates of New England, Inc., PO Box 307, Milan, NH 03588, Contracted Assessing Firm.

Date: 5/7/09

_____
Anne M. Stelmach, Clerk