

Edwin J. Bieniek

v.

City of Concord

Docket Nos.: 22974-06PT/23530-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2006 and 2007 assessments of: 2006 - \$177,900 (land \$110,600; building \$67,300) and 2007 - \$191,300 (land \$110,600; building \$80,700) on Map 8/Lot 5/3, a single family home on 0.12 acres at (the “Property”). For the reasons stated below, the appeals for abatement are denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the assessments have increased dramatically from 2004 forward;

- (2) the house has asbestos siding which is starting to crack, has only one bedroom, has a cracked main beam in the basement and the porch section is pulling away from the house causing the roof to leak;
- (3) a review of assessment-record cards submitted by the City support the overassessment of the Property;
- (4) a real estate services proposal suggested a list price range of \$150,000 to \$160,000; further, three listings supplied by Re/Max also support this range;
- (5) the market value of the Property both in 2006 and 2007 was in the range of \$155,000 to \$160,000; and
- (6) there is no transparency as to how assessments are arrived at in the City.

The City argued the assessments were proper because:

- (1) many of the sales described in the Re/Max proposal were not arm's-length transactions, were 2008 sales, consisted primarily of raw data with no analysis performed; of the sales described, three properties in the subject neighborhood were considered similar indicating a range of \$189,900 to \$205,000;
- (2) two restricted reports prepared by Michael Hathaway as of April 2006 and April 2007 indicated a market value of \$189,000 for tax year 2006 and \$197,000 for tax year 2007;
- (3) the market value indications equate to assessed values of \$183,500 for tax year 2006 and \$194,200 for tax year 2007; and
- (4) the Taxpayer has not met his burden to show the assessments were disproportionately assessed and the appeals should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed for either tax year 2006 or tax year 2007.

Assessments must be based on market value. See RSA 75:1. The Taxpayer did not present any probative evidence of the Property's market value. To carry his burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in 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). The Taxpayer submitted a Real Estate Services Proposal ("Proposal") prepared by Robin Dennis, Agent, Re/Max Connection dated June 16, 2008, however, the board was unable to rely on this Proposal for the reasons that follow. First, the Proposal was unsigned and contained a comparative "market analysis" of "comparable" properties currently on the market, under contract and recently sold. All of the eight comparable sales occurred in 2008 and no adjustments were made to reflect the change in market conditions over the period from April 2006 and April 2007. Further, the only adjustments made to the comparables were handwritten on the typewritten analysis, leaving questions as to when the handwritten changes were made and by whom. A handwritten change was also made to the suggested list price range of \$162,100 to \$172,100 to a range of \$150,000 to \$160,000. The City researched the sales in the Taxpayer's market analysis and for various reasons (i.e., estate/trust sale, locational differences, foreclosures), the majority were found not to be arm's-length sales. Of the sales provided in the Proposal, the City determined three sales were comparable to the Property. These sales were

44 Allison Street, 133 Broadway Street and 211 South Street. The indicated range of sale prices for these three sales was \$189,900 to \$205,000 which is supportive of the 2006 and 2007 assessed values of the Property.

The levels of assessment in the City for tax years 2006 and 2007 were 97.1% and 98.6% respectively as determined by the department of revenue administration. This means assessments generally were lower than market value. The Property's equalized assessments were \$183,213 and \$194,016 respectively (determined by dividing the assessment by the equalization ratio). These equalized assessments should provide an approximation of market value as of 2006 and 2007. To prove overassessment, the Taxpayer would have to show the Property was worth less than the equalized values. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The City presented two "Restricted Reports", one for tax year 2006 and one for tax year 2007. Each of these Restricted Reports analyzed four comparable sales, adjusted for various differences in the sales to the Property and arrived at conclusions of market value of \$189,000 and \$197,000 for tax years 2006 and 2007 respectively. The board finds these indications of value support the assessments for each of the tax years appealed.

The Taxpayer further argued his taxes had continually increased from tax year 2004. Increases from past assessments are not evidence that the Taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). The amount of property taxes paid by the Taxpayer was determined by two factors: (1) the Property's assessment; and (2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation, pp. 4-6 (1977). The board's jurisdiction is limited to the first

factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board's jurisdiction and authority limited by statute).

As stated above, 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 City. Appeal of Sokolow, 137 N.H. 642, 643 (1993). Based on all of the evidence provided, the board finds the Taxpayer failed to prove disproportionality and the appeal is 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: Edwin J. Bieniek, 29 Hope Avenue, Concord, NH 03301, Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: May 1, 2009

Anne M. Stelmach, Clerk

Edwin Bieniek

v.

City of Concord

Docket Nos.: 22974-06PT/23530-07PT

ORDER

The board has reviewed the “Taxpayer’s” May 29, 2009 “Motion for a Rehearing” (the “Motion”). In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order until it rules on the Motion.

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 Order has this date been mailed, postage prepaid, to: Edward J. Bieniek, 29 Hope Avenue, Concord, NH 03301, Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: June 3, 2009

Melanie J. Ekstrom, Deputy Clerk

Edwin J. Bieniek

v.

City of Concord

Docket Nos.: 22974-06PT/23530-07PT

ORDER

The board has reviewed the “Taxpayer’s” May 29, 2009 Motion for a Rehearing (“Motion”) and the “City’s” June 8, 2009 response to the Motion. The board’s June 3, 2009 suspension order issued to allow the board more time to consider the Motion is hereby dissolved.

The Motion is denied as it presents no sufficient showing that “the board overlooked or misapprehended the facts or the law...” in the Decision. RSA 541:3; Tax 201.37(e). The Motion is largely a restatement of the Taxpayer’s arguments previously raised at hearing which the Decision sufficiently addressed.

Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the Clerk’s date shown below. RSA 541:6.

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 Order has this date been mailed, postage prepaid, to: Edwin J. Bieniek, 29 Hope Avenue, Concord, NH 03301, Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: July 9, 2009

Melanie J. Ekstrom, Deputy Clerk