George Beals

v.

City of Berlin

Docket No.: 23003-06PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2006 assessment of $73,800 (land $8,800; building $65,000) on Map 110/Lot 48, 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) the Property was purchased for $19,744 in December, 2000;

(2) a comparative market analysis (Taxpayer Exhibit No. 1) prepared by a realtor at Gallus and Green, Realtors listed properties on the market and sold properties and suggested a market value of $50,000;

(3) the land slopes steeply making it difficult to even mow the lawn;

(4) the basement is damp, has large boulders and outcroppings of ledge and 50% is dirt flooring leaving only approximately 25% useable (as depicted in the photographs submitted as Taxpayer Exhibit No. 3); and

(5) his opinion of the Property's market value is between $50,000 and $55,000.

The City argued the assessment was proper because:

(1) three comparable sales were analyzed (Municipality Exhibit A) indicating a market value range of $72,200 to $83,400;

(2) an interior inspection was made with the Taxpayer and adjustments were made for physical and functional deficiencies; and

(3) the assessment is fair and equitable.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and thus the appeal is denied.

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 comparative market analysis "courtesy of" Kay Gruwell, Realtor ("Gruwell Analysis") which the board was unable to rely on for the reasons that follow. First, the Gruwell Analysis was unsigned and undated and contained limited information regarding properties listed on the market and properties which had sold. There was no support for either the sold properties or listings to show what adjustments were made to the sale prices to arrive at the value conclusion. Without such information, the board is unable to review the soundness of the value conclusion.

The level of assessment in the City for tax year 2006 was 97.4% as determined by the department of revenue administration's median equalization ratio. This means assessments generally were lower than market value. The Property's equalized assessment was $75,770 ($73,800 divided by 0.974). This equalized assessment should provide an approximation of market value as of April 2006. To prove overassessment, the Taxpayer would have to show the Property was worth less than the equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The City presented three comparable sales to support its assessment. The City stated a 5% deduction to the Property had been made for its topography. Further, 5% physical depreciation for the interior condition of the home and 5% depreciation for the basement were also applied. The board notes the assessment-record card also shows an effective square footage for the basement of 86 square feet out of a total of 576 square feet in area, which is supportive of the Taxpayer's statement of the basement's useable area. The board finds, based on the evidence submitted, the adjustments made by the City were reasonable.

The Taxpayer further argued his taxes had been increasing in value. Increases from past assessments are not evidence that the Taxpayer's Property is disproportionally 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: George Beals, PO Box 73, 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: May 11, 2009

_____
Anne M. Stelmach, Clerk

George Beals

v.

City of Berlin

Docket No.: 23003-06PT

ORDER

The board has reviewed the June 10, 2009 motion for rehearing ("Motion") filed by the "Taxpayer" with respect to the board's May 11, 2009 "Decision." The board's June 17, 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 "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. The dated and signed "letter" (Kay Gruwell) attached to the Motion, which was not submitted at the hearing, does not alter the board's decision that the Gruwell Analysis was not relied upon by the board because it "contained limited information regarding properties listed on the market and properties which had sold. There was no support for either the sold properties or listings to show what adjustments were made to the sale prices to arrive at the value conclusion. Without such information, the board is unable to review the

soundness of the value conclusion." See Decision at page 3. Therefore, no rehearing is warranted.

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: George Beals, PO Box 73, 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., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: July 9, 2009

_____
Melanie J. Ekstrom, Deputy Clerk