Neil and Linda Emerson

v.

Town of Allenstown

Docket No.: 23394-07PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2007 abated assessment of $297,300 (land $66,000; building $231,300) on Map 109/Lot 042.1, 4 Letendre Avenue, a single family home on 0.252 acres (the "Property"). For the reasons stated below, the appeal for further 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 argued the assessment was excessive because:

(1) the Property was purchased in July, 2006 for a stated price of $290,000, but this included an $8,700 concession from the sellers (three percent), which reduced the actual price to $281,300 (see Taxpayer Exhibit 4);

(2) as shown in Taxpayer Exhibit Nos. 2 and 3, the Property was on the market for longer than normal (189 days compared to an average of 105 days) and the listing price was reduced from $314,900 in January, 2006 to about $290,000 just before it sold in July, 2006;

(3) the Property is on a small lot in a neighborhood with lower quality houses with much lower assessments, making the Town's comparables invalid;

(4) the Town assessed the Property higher in relation to the sale price than other properties that sold and were assessed for less than their selling prices, as shown in Taxpayer Exhibit No. 1; and

(5) the Taxpayers' own comparables and other evidence support an abatement on the Property to $278,100 -- the assessed value in 2005, the year prior to the purchase.

The Town argued the assessment was proper because:

(1) assessment updates are performed every year in the Town, based on actual market sales and further inquiries of brokers and other market participants;

(2) although market conditions were changing, the sales data in the Town's appraisal (Municipality Exhibit A, pp. 5-6) indicates housing demand was still good and a 4% per annum appreciation rate was reasonable;

(3) the price at which the Property sold, because it is only one isolated transaction, is not necessarily indicative of market value; and

(4) the comparables and adjustments made in the Town's appraisal support the proportionality of the assessment.

The parties agreed the level of assessment was 95.2%, the median ratio computed by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionally assessed at $297,300 in tax year 2007. The appeal is denied for the reasons discussed below.

Assessments must be based on market value. See RSA 75:1. The Taxpayers chose not to present an appraisal or even a real estate broker's opinion of the market value of the Property as of the assessment date. (When asked about this, Mr. Emerson indicated the institution financing the Property for them may not even have performed an appraisal when they purchased the Property.) Instead, the Taxpayers relied on other arguments to support their claim for abatement.

The Taxpayers emphasized that, although they purchased the Property for $290,000 in July, 2006, this is not a good indication of its value because they received an $8,700 (three percent) "concession" as part of the transaction. The board finds this argument to be less than probative of actual market value for several reasons.

First, the sale price reported to the department of revenue administration for this transaction was $290,000. The board has reviewed the "PA-34" form signed by the Taxpayers, which is a matter of public record. This form, signed (under penalty for false statements, see RSA 74:18, II) on July 17, 2006, shows $290,000 as the "Sale Price" and, in answer to question 5 on this form ("Do you consider the selling price to be fair market value of the property?"), the Taxpayers responded "Yes."

Second, as noted at the hearing, the real estate transaction "Settlement Statement" included with the appeal document (also part of Taxpayer Exhibit No. 4) indicates the Property

was previously encumbered with two mortgages totaling about $286,000. Even if a relatively high 90%/10% loan/equity ratio had been used, the market value indication (based on these financings) is over $317,000. The board mentions this calculation, not because it is conclusive evidence of an exact value, but as a 'sanity test' and because it tends to offset and counter the Taxpayers' reasoning that what they believe is the concession-adjusted price ($281,300) should be the Property's market value.[1]

Third, and as the Town noted at the hearing, one sale (whether at the reported price of $290,000 or a concession adjusted price of $281,300) is not necessarily indicative of market value. The Town presented credible evidence of other sales of newer homes like the Property which, when adjusted for location, land size, time of sale and other factors, supported a market value of $316,100 as the middle of a reasonable "range" of value for the Property as of the assessment date. See Municipality Exhibit A, the Town's summary appraisal report, which contains detailed evidence regarding market conditions and four comparable sales and the adjustments made to arrive at this indication of market value. While the board noted the Taxpayers' questions regarding the comparability of these sales, the Town explained there were offsetting advantages and disadvantages between the Property's small size and 'in-Town' location and the attributes of these comparables in a more rural area about four miles away.

[1] One member of the panel hearing this appeal (Shamash) took note of Mr. Emerson's testimony that the Taxpayers did not have a broker of their own when they purchased the Property and believes this could mean the sellers' broker was willing to absorb the concession herself, instead of agreement on an actual reduction in the sale price between the parties, because she would not have to split in half the normal six percent real estate commission (charged to the seller) with another broker; in these circumstances, a three percent concession would be quite plausible, not necessarily because anyone agreed the market value was below the reported $290,000 sale price -- the same price used by the Taxpayers to obtain a new mortgage on the Property. In normal circumstances, negotiations leading to an actual price reduction should be reflected in the reported sale price to the department of revenue administration (in the PA-34 form), as well as to the mortgage company.

Given the limited evidence presented by the Taxpayers, the board is unable to give their 'time on the market' argument much weight. While it may have taken longer than average for the Property to sell (189 days compared to a Merrimack County "average" of 105 days), this is not necessarily significant. On its face, this cited statistic appears to be an average for the whole county and there is no indication of the range or amount of dispersion around this average. In the board's experience, six months is not an unduly or abnormally long period for a residential property to sell, especially when it may not have been appropriately priced when it was first listed (in January, 2006 in midwinter). The Town also presented evidence the market was still strong in the relevant period and a 4% appreciation rate (to the assessment date) is appropriate.

The board has noted the testimony regarding the general character of the neighborhood and the fact that the Property is a newer home, larger and of a higher quality than those shown in the photographs presented by the Taxpayers. These difference helps explain why the assessment on the Property is substantially higher than others on the same street (Letendre Avenue) and in the same vicinity. The Town also noted that some of the comparables relied on by the Taxpayers are smaller and of lower quality, with several being on a "dirt," unpaved street (River Road) in an area with commercial/industrial properties.

With regard to the Taxpayers' arguments that other properties had lower assessments compared to their selling prices, it is well established that the possible underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison of assessments to a few other properties. Id. The Town noted it reviews and updates assessments on an annual basis to reflect

changing market conditions and values and presented substantial market evidence to support the proportionality of the assessment at $297,300.

While the Taxpayers' argument the assessment should be reduced to what it was in 2005 ($278,100) is not supportable, they may have some basis for questioning whether the Property was overassessed in tax year 2007, given their experience, investigations and discussions with the Town's representatives.[2] The board must decide this appeal, however, based on the market value evidence presented at the hearing. Considered as a whole, this evidence supports the proportionality of the assessment on the Property, especially in light of the Taxpayers' burden of proof and the lack of an appraisal or other more compelling market evidence to support their position that a further 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, <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(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.

[2] The board can place no weight on settlement negotiations or an offer by the Town's representative to reduce the assessment further (mentioned by Mr. Emerson at the start of the hearing), an offer that was not accepted. Parties propose settlements for all sorts of reasons, including a desire to avoid the time, cost and uncertainty of a hearing, and a settlement offer made in good faith is both privileged and not necessarily indicative of the merits of the issue under appeal – here, the proportionality of the assessment on the Property.

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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Michele E. LeBrun, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Neil and Linda Emerson, 4 Letendre Avenue, Allenstown, NH 03275, Taxpayers; Chairman, Board of Selectmen, Town of Allenstown, 16 School Street, Allenstown, NH 03275; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: May 27, 2009

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Anne M. Stelmach, Clerk