

Philip Tufano

v.

Town of Londonderry

Docket No.: 24079-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$336,100 (land \$102,500; building \$233,600) on Map 11/Lot 58-76, 23 Fairway Road, a single family home with an attached apartment unit on 1.46 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) he provided ten comparables to the Town in the abatement process which were assessed for much less than the Property;

- (2) several sales (including 5 East Yellowstone Road, shown on Taxpayer Exhibit No. 1) support a lower market value and assessment;
- (3) attached to the appeal document is an opinion of value by a real estate broker estimating the market value of the Property to be no more than \$260,000 as of July 29, 2009;
- (4) while it is true the Taxpayer listed the Property for \$375,000 with another broker in the fall of 2009, he got no offers and withdrew the listing (in late December, 2009);
- (5) the listing price (\$375,000) is not reflective of market value (because the Taxpayer hoped to get approximately \$320,000 for the Property and thought its market value at that time was about \$285,000);
- (6) the Taxpayer purchased the Property in 2002 for \$285,000 and put additional money into improvements which he hoped to recoup with the higher sale price; and
- (7) the assessment should be abated based on the broker opinion of value.

The Town argued the assessment was proper because:

- (1) the broker who supplied the Taxpayer with an opinion of value (dated July 29, 2009) did not mention or take into account the accessory apartment and the fact the land backs up to hundreds of acres of conservation land;
- (2) the analysis submitted by the Town notes these differences and, based on three comparable assessments (including 5 East Yellowstone Road), concluded the Property was not disproportionately assessed;
- (3) the Town also analyzed the ten comparables presented by the Taxpayer (in Municipality Exhibit A) and noted significant differences that explain why their assessments are lower than the Property;

(4) the Town performed an assessment update in 2009 and reduced the assessment on the Property (to \$310,900) at that time; and

(5) the Taxpayer failed to meet his burden of proof of proving disproportionality

The parties agreed the level of assessment in the Town was 106.2% in tax year 2008, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving the Property was disproportionally assessed in tax year 2008. The appeal is therefore denied for the reasons discussed below.

Applying the stipulated median ratio of 106.2% to the assessed value provides an indicated market value estimate of \$316,478 ($\$336,100 \div 1.062$). To prevail on this appeal and obtain a tax abatement, the Taxpayer needed to present credible evidence that the Property's market value was less than this equalized value of \$316,478. 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); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The board finds the Taxpayer did not present such evidence in this appeal.

For several reasons, the board is unable to give any weight to the Taxpayer's comparative market analysis ("CMA") performed by a realtor, Fran Carney, on July 29, 2009. First, the CMA contains no analysis relating the Property to the listed or sold properties by making adjustments for differences. Rather, as the Town noted, the CMA is simply a submission of raw data and a statement of one broker's recommendation of a listing price of \$260,000 and a sale price of \$250,000. The Taxpayer chose not to call Ms. Carney as a witness at the hearing to explain the basis of her recommendation and answer questions regarding it. Second, the

Taxpayer never listed the Property at the \$260,000 suggested listing price but rather listed it with a different realtor for \$375,000. (The Taxpayer explained he would have been unwilling to sell the Property for \$250,000 because it was less than the \$285,000 he had paid in 2002 and the improvements made since then.) Third, the CMA also does not note and account for the Property having a legal accessory apartment in addition to the primary residence in contrast to the listed or sold properties being only single family dwellings. Having an accessory apartment is generally a factor the market would consider and value accordingly. Based on the Taxpayer's testimony of a gross rent of \$785 per month, the apartment has a contributory value conservatively estimated by the income capitalization approach (after subtracting for estimated vacancy and expenses) of \$40,000 - \$50,000. Fourth, the CMA was prepared on July 29, 2009, 16 months after the assessment date of April 1, 2008. While neither party submitted any specific evidence as to the market change in those intervening 16 months, both parties clearly were aware, as the board is, that the real estate market was declining and thus, the CMA estimate, if accepted at face value, would have to be time adjusted back to April 1, 2008.

As noted above, the Taxpayer obtained the Town's assessment data for 10 split level properties and argued all were assessed less than the Property. The board reviewed the assessment-record cards (submitted by the Town as part of Municipality Exhibit A) and finds sufficient market related reasons for why the Property is assessed higher than the other 10 properties, most of which also had accessory apartments. The Property was built in 1996; since acquired in 2002, the Taxpayer has done remodeling, particularly to the kitchen. He acknowledged these improvements and they are also shown in the Multiple Listing Service sheet in the Town's assessment analysis. The photographs in the record show the Property is well maintained with good updated interior finish and adequately maintained grounds.

A review of the assessment-record cards and photographs submitted by the Town indicate the main difference between the 10 comparables and the Property is its superior condition and younger age. The 10 comparables were initially constructed in the 1970's and 1980's and received higher depreciation on the assessment-record card as the result of their age and generally inferior condition. Also, several of the comparable properties received economic depreciation for being located adjacent to commercial property, Interstate 93 or thoroughfares such as Mammoth Road. The Property is located in a quieter residential setting on a cul-de-sac and is bordered on two sides by the Musquash Conservation area consisting of several hundred acres of open space land. Last, the Property has approximately 2,500 square feet of living area between the primary dwelling and the accessory apartment while a number of the comparables have lesser living area. Collectively, these three factors (age/condition, location and square footage) adequately explain why the Property was assessed higher than other split levels with accessory apartments.

Both the Taxpayer and the Town utilized 5 East Yellowstone Road as a sale/assessment comparable. The Taxpayer testified the 5 East Yellowstone Road property sold at foreclosure in 2009 for \$210,000 and argued this foreclosure and others on his immediate street negatively impacted the value of his Property. While the existence of foreclosures and other types of distressed sales can negatively impact the market value of nearby properties, the board finds foreclosure sales generally do not reflect the criteria that must exist for such transactions to be considered arm's-length. Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 255 (1994) (When utilizing sales as the basis for estimating market value, a number of factors must be considered in determining whether sales are indicative of market value, "including whether the sale was an arm's length transaction, whether additional

incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.”) During foreclosure, undue duress usually exists on the part of the seller and, therefore, foreclosure sales are generally not considered market transactions.

In conclusion, the board finds none of the evidence submitted supports the Taxpayer’s assertion that the assessment should be reduced to reflect a market value of \$250,000. Rather, the evidence, when considered as a whole, indicates that if adjustments are made for time, size, condition and location differences, the Property’s assessment is proportional.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Philip Tufano, 23 Fairway Road, Londonderry, NH 03053, Taxpayer; and Assessor's Office, Town of Londonderry, 268B Mammoth Road, Londonderry, NH 03053.

Date: 9/29/10

Anne M. Stelmach, Clerk