

Bent Family Trust

v.

City of Dover

Docket No.: 24190-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2008 assessment of \$736,800 (land \$302,500; building \$434,300) on Map N0008/Lot 003001, 18 Wisteria Drive, a single family home on 1.20 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) when the assessed values of three other homes which sold in the Property's general area are compared to their sale prices, all three transfers show ratios of 66% while the Property's assessed value compared to its sale price indicates a ratio of 76%;
- (2) the Property's assessment is a "spot" assessment;
- (3) the assessed value of the land increased \$150,000 from 2007 to 2008; and
- (4) when the appropriate 66% ratio is applied to the Property, an abated assessed value of \$640,200 for the Property is indicated, as explained in Taxpayer Exhibit No. 2.

The City argued the assessment was proper because:

- (1) the City uses one set of cost schedules to determine all assessments City-wide;
- (2) the City does not "spot" assess or change assessments based on the sale of any single property;
- (3) the City used a "land residual" technique to estimate land values due to scant data of vacant land sales; and
- (4) the analysis in Municipality Exhibit A shows the Property may in fact be underassessed and no abatement is warranted.

The parties stipulated the level of assessment in the City for the 2008 tax year was the 94.5% median ratio determined by the department of revenue administration.

Board's Rulings

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

The benchmark for assessments is market value. See RSA 75:1. The Taxpayer purchased the Property in April, 2007 for \$970,000, one year prior to the 2008 assessment date,

but contends the selling price, despite a substantial price reduction by the seller prior to the purchase, was not reflective of market value. One of the trustees (John Bent) explained his belief the Taxpayer ‘overpaid’ by about \$100,000 because he was a less knowledgeable out-of-state buyer. In the appeal document, the Taxpayer stated the “Appeal Year Market Value” of the Property was \$843,900.

But even if these lower market value representations by the Taxpayer (either \$870,000 or \$843,900) are adjusted by the Town’s level of assessment (94.5%), the indicated assessment on the Property (either \$822,200 or \$797,500, rounded) is still above the actual assessment of \$736,800 for tax year 2008 by a substantial amount (at least \$60,000). Consequently, the Taxpayer has not shown the assessment on the Property was disproportionately high and in need of a tax abatement.

The Taxpayer asserted the Property was assessed disproportionately compared to other similar properties in the general neighborhood based on the fact that three recently transferred properties, located at 13 Fairway Drive, 24 Wisteria Drive and 41 Three Rivers Farm Road, were each assessed at 66% of their selling prices while the Property’s assessment to sale price ratio was 76%. The board finds the Taxpayer’s reliance on this statistic is misplaced for several reasons.

As the City noted and the parties stipulated, the City’s level of assessment in tax year 2008 was 94.5%. Because the benchmark is market value, it is not sufficient for the Taxpayer to argue a tax abatement is warranted simply because the assessment on the Property may be higher, in comparative terms, than assessments on three other properties. It is well-established that the underassessment of others does not prove disproportionality. Appeal of Cannata, 129 N.H. 399, 401 (1987). To lower the assessment on the Property because one or more other

similar properties in the City may be underassessed would not lead to greater proportionality because proportionality is based on market value and the level of assessment in the City as a whole, not necessarily in relation to one or a few other properties. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992), where the supreme court held it was improper to abate assessments (in an appeal by 34 condominium owners) based upon the level of assessment computed for only one class of property (condominiums), rather than the overall level of assessment, as measured by the median ratio for the municipality as a whole. The proper remedy if one or more other properties is underassessed is to raise their assessments, not lower the assessment on the Property (below the market value benchmark adjusted by the level of assessment). See, e.g., RSA 71-B:16, I.

Further, the Taxpayer's acknowledgement that the Property is assessed at 76% of its market value, rather than the 94.5% general level of assessment for all other properties City-wide, is an indication the Property may also be underassessed. To grant an abatement simply on the basis of three properties that were allegedly disproportionately assessed would harm those taxpayers and property owners whose assessments are appropriately at the 94.5% level of assessment and cause them to pay more than their "fair share" of the property tax burden.

The Taxpayer also asserted an abatement was warranted because the Property's land portion of the assessment had increased from \$152,500 in tax year 2007 to \$302,500 for the 2008 tax year under appeal. The City testified it annually reviews assessments and makes adjustments as necessary. Further, there are various reasons why assessments on individual properties may increase or decrease at different rates as a result of a City-wide review. The City testified it does not make "spot" assessments based on the sales of individual properties but rather determines all assessments based on one set of cost schedules applied through its computer assisted mass

appraisal (“CAMA”) system. Looking at relative rates of increase in assessments alone is therefore not probative of the need for a tax abatement. Increases from past assessments are not evidence that any 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). In this case, the City asserted it had reviewed the selling prices and assessments of multiple properties across the City and determined an adjustment to the land value schedule was appropriate. The City’s review resulted in the increase from 2007 to 2008 to the land portion of the assessment.

As previously stated, assessments must be based on market value. The Taxpayer compared the various factors influencing the Property’s assessment and testified the City had made inconsistent adjustments to other properties compared to the Property for various amenities and factors such as: the ability to have water access, the presence of a view, any easements and the quality, architectural design and grade of materials in the construction of the houses. Again, the Taxpayer’s reliance on a comparison of the Property’s features to the features of some other similarly situated properties is not probative evidence an abatement is warranted. Even if the Taxpayer could somehow show the City could have or should have used a different method of arriving at the assessment, arguing the municipality used a “flawed methodology” is not legally sufficient without proof that the resulting assessment is disproportional, based on market value and the overall level of assessment in the Town. See Porter v. Town of Sanbornton, 150 N.H. 363, 367-69 (2003).

In support of its position that the Property was not overassessed, the City submitted an assessment “analysis” (Municipality Exhibit B). In the analysis, the City described the general section of the City where the Property is located as a high-end residential subdivision and

testified this general area was the most desirable and elite section of residential housing in the City. In the analysis, the City compared the Property to three other properties in the general neighborhood and found that, after some appropriate adjustments, a better estimate of market value for the Property is \$959,400 which, after factoring by the 94.5% general level of assessment, would have resulted in a higher assessment (\$906,600). The board finds this analysis provides further support for its findings that no abatement is warranted for the Property.

For all these reasons, the board finds the Taxpayer failed to prove the Property was disproportionately assessed in tax year 2008 and therefore the appeal is denied.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bent Family Trust, c/o John and Mary Bent, 18 Wisteria Drive, Dover, NH 03820, Taxpayer; Chairman, Board of Assessors, City of Dover, 288 Central Avenue, Dover, NH 03820; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: February 23, 2011

Anne M. Stelmach, Clerk