

Stephen Mitchell

v.

Town of Center Harbor

Docket No.: 24322-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 abated assessment of \$264,700 (land \$91,400; building \$173,300) on Map 3/Lot 97.08, 19 Ridge Berry Lane, a single family home on 4.82 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted, but only to the value recommended by the Town’s assessors at the hearing.

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. The Taxpayer carried this burden.

The Taxpayer argued the abated assessment was excessive because:

(1) the Property is “less than desirable” because it abuts wetland, is sloped and has limited usable acres;

- (2) the purchase price he paid for the Property is not indicative of its value because he had only one day to purchase it (after he sold his old house) and he needed to find a house in the same community and school district for his children; and
- (3) the assessment should be substantially abated based on the “Brokers [sic] Price Opinion” (“BPO”) of \$219,000 submitted with the appeal document.

The Town argued the abated assessment, as reduced further below, is proper because:

- (1) the Town performed a revaluation in 2007;
- (2) the Taxpayer paid \$255,000 for the Property in November, 2007, after it was on the market for only one day, but below the asking price of \$259,900;
- (3) the BPO is as of January, 2009 and is not credible because it relies on sales in other towns and implies a higher than reasonable rate of price depreciation occurred in the market; and
- (4) the Town’s assessors are willing to abate the assessment further to \$253,000, but no lower value is warranted.

The parties agreed the level of assessment in the Town in tax year 2008 was 97.1%, the median ratio calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence presented, the board finds the proper assessment to be \$253,000, the abated value recommended by the Town’s assessors at the hearing. The appeal is therefore granted to this assessment for the reasons discussed below.

Assessments must be based on market value. RSA 75:1. As noted above, the Taxpayer has the burden of showing how the market value of the Property, adjusted by the level of assessment, establishes disproportionality and the basis for an abatement.

The Taxpayer did not present an appraisal or any direct testimony of the market value of the Property as of the assessment date. Instead, he briefly stated his belief he paid more for the Property than it was worth (when he purchased it for \$255,000 in November, 2007) because he had only one day to find a home to replace the property he sold and he supported this argument entirely with the written BPO submitted with his appeal document. The realtor who prepared the BPO (James Miller of Nash Realty) did not attend the hearing and therefore was not available to answer questions from the Town and the board regarding his estimate of a \$219,000 “Sales Price” in January, 2009. The Taxpayer stated this realtor was hired by his bank “for a loan modification.”

In general, broker opinions are less reliable than appraisals performed by duly qualified experts who are typically licensed real estate appraisers subject to published professional standards (commonly known as “USPAP,” the Uniform Standards of Professional Appraisal Practice). The Taxpayer did not present the broker’s specific qualifications or experience to demonstrate his fitness to make an independent estimate of the market value of the Property. The BPO was prepared for a bank, not the Taxpayer, and it is unclear whether the broker’s estimate was influenced by this type of client, who generally has a motivation for obtaining a relatively conservative estimate of value to support a loan.

In addition, the board finds the broker’s opinion is not well supported, consists of only two pages and is not signed. There is no indication in the BPO that this broker physically inspected the listings or sales listed in this document. The three “closed sales” he refers to ranged in price from \$224,900 to \$257,500, with one located in Meredith and two in New Hampton (6.5 and 15 miles away). They are of a different style (“ranch” rather than “split

entry”) and are smaller in size (1,200 to 1,500 square feet compared to 1,800 square feet). The BPO shows no quantitative adjustments for these or other differences with the Property.

The Town, for its part, agreed that some abatement is warranted and recommended a further abatement to \$253,000. The board finds this amount of abatement is sufficient to achieve a proportional assessment for tax year 2008 in the absence of more probative market value evidence from the Taxpayer. An abated assessment of \$253,000 (rounded) reflects an indicated market value of \$260,600 as of the assessment date ($\$253,000$ assessed value divided by 97.1% level of assessment for tax year 2008).

There is evidence property values in the Town were fairly stable or even increasing slightly between 2007 and 2008. The 2007 median ratio was 99.7%, compared to the 97.1% in 2008 and there is no contrary evidence allowing the board to conclude prices in the Town for this type of property declined between the time the Taxpayer purchased the Property in November, 2007 and the assessment date (April 1, 2008). While the Town’s initial assessments ($\$275,300$ abated to $\$264,700$) appear, on review, to be somewhat high and disproportional to market value, the board finds the recommended abatement (to $\$253,000$) achieves reasonable proportionality.

Support for this finding can be found in the subsequent change in the median ratio. In 2009, the median ratio increased to 114.4%, which indicates an annual rate of price depreciation of approximately 18% (114.4% divided by $97.1\% = 1.178$) or roughly 1.5% per month. If the BPO of $\$219,000$ in January, 2009 is accepted at face value and adjusted back to the assessment date (9 months \times 1.5% = 13.5% price decline), then the market value indication from this one piece of evidence would be $\$253,200$ (rounded). Adjusted by the level of assessment, the indicated assessed value would be $\$245,900$ (rounded), which is only about 2.8% less than the abated value recommended by the Town. Slight changes in any of the assumptions employed,

such as a margin of error in the BPO estimate or the rate of price depreciation for this type of property, would bring the indicated assessment close to or above the Town's recommended abated assessment of \$253,000.

As the board has frequently noted, there is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted by the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Company v. Town of Exeter, 119 N.H. 700, 702 (1979). This principle is in accord with the New Hampshire Constitution which, as the supreme court has recognized, "anticipates some practical inequalities" may occur in the levy of "proportional and reasonable assessments" and "[a]bsolute mathematical equality is not obtainable in all respects if taxation is to be administered in a practical way." Sirrell v. State of New Hampshire, 146 N.H. 364, 370 (2001), quoting from City of Berlin v. County of Coos, 146 N.H. 90, 94 (2001). In other words, "mathematical exactitude" is not required, but only a "rough approximation." Cf. Caterpillar, Inc. v. New Hampshire Department of Revenue Administration, 144 N.H. 253, 262 (1999).

For these reasons, the board finds a further abatement to \$253,000 for tax year 2008 is warranted. The board disagrees with the Taxpayer, however, that the abated assessment should be lower than this recommended amount by the Town.

If the taxes have been paid, the amount paid on the value in excess of \$253,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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: Stephen Mitchell, PO Box 742, Meredith, NH 03253, Taxpayer; Chairman, Board of Selectmen, Town of Center Harbor, PO Box 140, Center Harbor, NH 03226; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 8/11/10

Anne M. Stelmach, Clerk