

Michael Hubbard

v.

City of Manchester

Docket No.: 24333-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2008 assessment of \$179,700 (land \$95,400; building \$84,300) on Map 0176/Lot 0015, a two family home on 0.20 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) the Property’s location near a large hospital negatively impacts its value;
- (2) the Property’s unique shape restricts its utility and marketability;
- (3) it has been difficult for the Taxpayer to keep the apartments occupied;
- (4) the apartments only have one bedroom and, therefore, do not command high rents;

(5) a list (Taxpayer Exhibit No.1) containing other apartment houses' assessments and sale prices indicates the Property is overassessed; and

(6) the Property's market value is in the \$110,000 to \$120,000 range.

The City argued the assessment was proper because:

(1) the properties used by the Taxpayer in Taxpayer Exhibit No.1 were not transferred in arm's-length transactions and should not be used to estimate the Property's market value;

(2) the Property's location is in an older single family multi-residential neighborhood and its location is not an impediment to its marketability;

(3) the Taxpayer listed the Property for sale at \$210,000 in 2007;

(4) the City's analysis and a summary appraisal report prepared by Lee Ann Provencher (the "Provencher Report") (Municipality Exhibit A) indicate the Property is not disproportionately assessed; and

(5) the Provencher Report analyzed four comparable sales, adjusted for the Property's irregular shape and other features and reached an opinion of market value as of April 2008 of \$175,000.

The parties agreed the level of assessment in the City was 105.6%, the median ratio computed by the department of revenue administration for tax year 2008. After the hearing, the board informed the parties one of its review appraisers would perform an independent investigation and analysis and submit a report and the parties would be provided a copy of the report and an opportunity to file comments regarding it. Ms. Theresa M. Walker, CNHA, completed and filed her report (the "Walker Report") on March 15, 2011. The board received written comments from the City. The Taxpayer did not file any comments.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving the assessment was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value adjusted by the level of assessment in the City. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In order to prevail in his tax abatement appeal, the Taxpayer had the burden of proving the market value of the Property was less than \$170,170, the assessment under appeal (\$179,700) adjusted by the level of assessment in the City for tax year 2008 (105.6%).

For several reasons, the board finds the Taxpayer's submissions and testimony to be of little probative value in determining whether or not the Property was disproportionately assessed.

The Taxpayer did not determine an indication of market value for the Property using any of the recognized appraisal approaches to value but merely compared the Property's assessment to the assessments of several other duplex properties which sold (see Taxpayer Exhibit No. 1). Many of the comparable properties used by the Taxpayer were not arm's-length transactions but were "second generation" sales as defined by Ms. Walker (Walker Report at pp. 4-5). After reviewing the online assessment-record cards submitted by the Taxpayer of the 13 sales of duplex properties listed in Taxpayer Exhibit No. 1, it appears only two did not have some form of lending institution involvement in their transfers (see also Municipality Exhibit C). Further, none of the 13 sales listed contained two single-bedroom units. In addition, many of the sales were listed as being in "as is" condition or "work needed" or some other variable which differed significantly from the Property which was totally remodeled in 2001 and a new roof surface was installed in 2005. The mere comparison of assessments between properties without doing any analysis to account and adjust for the dissimilarities between the Property and any of the comparables used by the Taxpayer is of no use in determining whether the Property is

disproportionately assessed. Further, the Taxpayer provided no market data to support his assertions that the Property's location near the Elliot Hospital and its unique shape negatively impacted its market value. Unsupported contentions do not help any taxpayer carry their burden of proof.

The board finds the best evidence of the Property's market value is contained in the Walker Report. The Walker Report is a summary appraisal which estimated the Property's market value on April 1, 2008 to be \$165,000. When equalized by the City's equalization ratio of 105.6% for the 2008 tax year, the indicated assessment is \$174,200.

We further find the Walker Report follows accepted appraisal methodology and provides a reasonable, well supported opinion of the Property's market value on April 1, 2008. The board concurs with the Walker Report's finding that the use of comparable sales of single-bedroom duplex units is critical to estimating a reliable market value for the Property. Single-bedroom units do not generate the same income stream as multi-bedroom units and, therefore, a duplex containing two, single-bedroom units will typically have a lower market value than a duplex with multi-bedroom units, all other factors being equal.

Further, before performing her analysis, Ms. Walker verified the data for each of the comparable sales used with a party to the transaction; the grantor, grantee or real estate agent. This verification is a key component of an appraisal attempting to estimate any property's market value. "Sales that are not arm's-length market transactions (in accordance with the definition of *market value* used in the appraisal) should be identified and used with caution. To verify sales data, an appraiser confirms statements of fact with the principals to the transaction, if possible, or with the brokers, closing agents, or lenders involved." Appraisal Institute, The Appraisal of Real Estate 423 (12th ed. 2001).

Additionally, the board finds the adjustments made to the comparable sales by Ms. Walker were based on market data and reasonably supported. The adjustments accounted for any dissimilarity between the Property and each of the comparable sales including differences in location, improvements' size (square footage), quality and condition as well as the presence of a garage or basement. For these reasons, the board gave the Walker Report considerable weight when deciding the Taxpayer's appeal.

In support of the assessment, the City submitted the Provencher Report (Municipality Exhibit A). Ms. Provencher was present at the hearing and testified she is a residential assessor for the City and reviewed the assessments of between 30 and 40 two-family properties during the abatement proceedings. She reviewed the Property's assessment after the Taxpayer filed his abatement request and subsequent appeal. Based on Ms. Provencher's testimony, the board also gives weight to the Provencher Report. Ms. Provencher stated she did not inspect the interior of the Property and had relied on the data collected by City staff appraisers who inspected the interior on August 25, 2009 and the exterior on December 10, 2010. Further, Ms. Provencher testified she had "driven" by some of the comparable sales, but for the most part, relied on the information contained on the assessment-record card, in the Northern New England Real Estate Network (NNEREN) website, and data from owners and real estate brokers (Provencher Report at p. 6). Based on her analysis, Ms. Provencher arrived at an indicated market value for the Property of \$175,000.

Reconciling the market value estimates contained in the Walker Report (\$165,000) and the Provencher Report (\$175,000) with the \$170,000 market value estimate determined by equalizing the assessment supports the board's finding that the assessment is reasonable and proper and no abatement is warranted.

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

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: Michael Hubbard, PO Box 982, Kingston, NH 03833, Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: May 20, 2011

Anne M. Stelmach, Clerk