Kevin S. Pearson

v.

Town of Chichester

Docket No.: 24363-08PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2008 abated assessment of $406,900 (land $121,700; building $285,200) on Map 2/Lot 51-17, 24 Connemara Drive, a single family home on 2.69 acres (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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 assessment was excessive because:

(1) the single family home was built in 2002 by the Taxpayer;

(2) the Property has no landscaping, some unfinished elements and is of a lower quality than other houses in the neighborhood;

(3) an appraisal performed by Crafts Appraisal Associates (the "Crafts Appraisal," Taxpayer Exhibit No. 1), provided to the Town at the mediation meeting, estimates the market value of the Property to be $330,000 as of April 1, 2008;

(4) a summary of sales (Taxpayer Exhibit No. 2, the "Sales Summary") shows five that sold on the same street at a range of $339,350 to $383,000 in the April 1, 2007 to October 31, 2008 time frame and, since 2001, only one sale was over $400,000; and

(5) the assessment should be abated to $330,000 (adjusted by the level of assessment).

The Town argued the abated assessment was proper because:

(1) the Town did a full revaluation in 2008 performed by Purvis & Associates;

(2) the Crafts Appraisal indicates the quality of the Property is similar to the comparables;

(3) the Property has central air conditioning but the comparables do not and the Crafts Appraisal does not account for the unfinished area above the garage which the comparables also do not have;

(4) the estimate of market value based on the cost approach in the Crafts Appraisal is about $395,000 with no explanation of the difference between this estimate and the final estimate of value;

(5) the Town gave the Property a 5% functional depreciation adjustment for the unfinished elements noted on the assessment-record card;

(6) the Town used two of the five sales mentioned by the Taxpayer and both are smaller in size than the Property; and

(6) no further abatement is warranted.

The parties stipulated the level of assessment in the Town was 99.6%, the median ratio calculated by the department of revenue administration for tax year 2008. While viewing the property in a second Chichester appeal (Brehm v. Chichester, BTLA Docket No. 24351-08PT) on July 1, 2010, the board did a "curb" view of the Property and a number of the comparables in the same development presented either in the Crafts Appraisal or the Sales Summary. See RSA 71-B:5, I and RSA 76-16-a, I (the board has the authority to institute its own investigation).

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $388,300. This abated assessment is derived by applying an additional 5% functional depreciation (in addition to the 5% applied by the Town for unfinished areas of the dwelling) to account for the finish of the dwelling being slightly below the average +30 grade designated by the Town on the assessment-record card and for the oversized attached garage. The appeal is therefore granted.

In arriving at this abated value, the board reviewed the Crafts Appraisal, the Sales Summary and the testimony of both the Taxpayer's representative and the Town's representatives. To determine whether an abatement is warranted the board considers and weighs the market value evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co.

v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

In particular, four of the five sales that occurred in 2007 and 2008 on Connemara Drive provide a good insight as to the market value for similar homes in the Taxpayer's immediate neighborhood.[1] The remaining four sales occurred from March 2008 through October 2008 and when analyzed on a price per square foot of living area (including finished basements weighted at 50% of first floor living area) indicates a total sale price range of $117 to $134 per square foot. The Property's assessment of $422,600 substantially exceeds that range, being at approximately $160 per square foot. The Property and the four comparables all have similar living areas in a close range of approximately 2,600 to 3,100 square feet.

The board has reviewed the specific features of the Property compared to these others in an attempt to discern the reason for such a difference. On one hand, the board notes, as was testified to, the Property has no decks or porches while the four comparables do; however this factor does not significantly contribute to their value difference. On the other hand, the board notes the Property has 3 1/2 bathrooms while most of the other sales have 2 1/2 bathrooms and the Property has central air conditioning and vacuum systems while it appears the comparables

[1] The board has not considered the fifth sale included in the Sales Summary, identified as 0 Connemara Drive, for several reasons. The assessment-record card submitted by the Taxpayer's representative, Jon A. Rice of Commercial Property Tax Management, indicates a different address within the development of 1 Limerick Drive. The assessment-record card for 1 Limerick Drive which, while showing a similar styled dwelling, is not the same dwelling as show on the multiple listing sheet attached as part of the Sales Summary. Given this confusion, the board, utilizing the sales reporting service of Northern New England Real Estate Network ("NNEREN"), was unable to identify the sale of 0 Connemara Drive as reflected by the multiple listing sheet contained in the Sales Summary. Moreover, if indeed such property had sold for $339,350, it far exceeded the price of the other four sales on a per square foot basis because its gross living area is only approximately one-half that of the other properties.

do not. Again however, these attributes are not of such a magnitude to account for the difference.

The biggest difference appears to be in the value attributable to the Property's large 28 x 40 three bay attached garage with the unfinished three-quarter story upper level. The comparables all have smaller attached two or three bay garages or, in the instance of 40 Connemara Drive, a two bay basement garage. Isolating the contributory value on the assessment-record card of the Taxpayer's garage and upper story unfinished areas indicates it adds $67,100 (896 effective square feet [= 392 + 504] x $83.18 per square foot x depreciation factor of 0.9 = $67,100, rounded) to the assessed value. While on one hand the large garage and the ability to expand the second floor living space is a positive attribute for the Property, its very large size limits the market participants that would pay for the additional cost of the oversized garage. Consequently, the board finds the value on the assessment-record card is excessive compared to the likely contributory market value of these features.

As noted above, determining market value involves both the weighing of factors and application of judgment. While the cost of the oversized garage may exceed its contributory value, the house does contain 3 1/2 bathrooms, central vacuum and central air-conditioning, all positive attributes that the comparables do not have. Offsetting these items, however, is the slightly inferior interior finish (based on a review of the limited photographs of the Property in the Crafts Appraisal and the Taxpayer representative's discussion of the interior finish (formica countertops versus granite, no crown molding, composition floors versus tile, etc.)

The board also reviewed the Crafts Appraisal. While there may be other adjustments that could be critiqued in this appraisal, the very nominal adjustment of $5,000 for the additional

garage space is not reflective of the positive attributes that such a garage has (albeit, not to the extent the Town has assessed it on the assessment-record card).

On balance and mindful of the Property's positive attributes discussed above, the board finds the Property should receive an additional 5% functional obsolescence to reflect the oversized garage and the slightly below grade features. The adjusted value of $388,300 still places it at the upper end of the sales of the homes that occurred on Connemara Drive in 2008 (range of sale prices was $350,000 to $383,000).

In conclusion, the board finds the additional 5% depreciation reflects the slightly lower grade and a discounting necessary to recognize the oversized garage value attributed by the Town and an abated assessment of $388,300 is proportional to the sales data submitted.

If the taxes have been paid, the amount paid on the value in excess of $388,300 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.

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. 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

_____
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: Jonathan Rice, Commercial Property Tax Management, 10 Commerce Park North - Suite 13B Bedford, NH 03110-6959, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Chichester, 54 Main Street, Chichester, NH 03258; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: July 13, 2010

_____
Anne M. Stelmach, Clerk