

Davin and Jeff Pope

v.

Town of Pembroke

Docket No.: 24731-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$195,200 (land \$69,100; building \$126,100) on Map 565/Lot 81-58, 7 Donna Drive, a single family home on 0.46 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

- (1) a “proposal to market . . . home” prepared by a real estate broker, Jason McMahon of Coldwell Banker (the “McMahon Proposal”, Taxpayer Exhibit No. 1) estimates the market value of the Property was \$180,802 as of March 16, 2009;
- (2) a foreclosure sale (2 Melissa Drive) should be considered reflective of market value because a bank would not ‘give away’ a property; and
- (3) the assessment for tax year 2009 should be further abated to reflect the \$180,802 estimate of market value.

The Town argued the abated assessment was proper because:

- (1) the Town performed a revaluation in 2009 and the assessment on the Property was subsequently abated by \$1,000 (to reflect the fact the house only has a partial area covered with hardwood floors);
- (2) the Town reviewed the McMahon Proposal and found the comparables to be less valid because of the ages of three of the comparables and special circumstances pertaining to several of the sales, including an estate sale (156 Buck Street), a foreclosure sale (2 Melissa Drive), a sale subject to third party approval (6 Skyview Terrace) and one sold by a relocation company (227 Buck Street), and all four of these sales were or should have been unqualified as indicative of market value (based on department of revenue administration guidelines);
- (3) the Town analyzed the comparable properties identified in Municipality Exhibit A which are of the same style, size and similar age to the Property and these sales indicate a market value range of \$202,080 to \$215,000; and
- (4) the Taxpayers failed to meet their burden of proving disproportionality.

The parties agreed the level of assessment was 95% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

The board finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied for the following reasons.

Assessments must be based on market value. See RSA 75 and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In order to prevail in a tax abatement appeal, the Taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the level of assessment in the Town (95%).

The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The primary evidence of market value submitted by the Taxpayers was the McMahon Proposal. The McMahon Proposal is titled a "Seller Services Proposal" aimed at persuading the Taxpayers to hire Mr. McMahon. The proposal is in name and in purpose a marketing document ("Let Me List Your Home Now!") rather than an independent estimate of value prepared by a real estate broker, not an appraiser. Mr. McMahon did not attend the hearing and therefore, as the Town noted, was not available to answer questions about his work, including the properties he selected for comparison, and his conclusions.

The board finds the McMahon Proposal is far less probative than the evidence presented by the Town to support the proportionality of the assessment. Among other things, all four of the properties considered by Mr. McMahon (three sales and one listing) raise questions because of special circumstances pertaining to each. These circumstances, investigated and noted by the

Town, reflect a foreclosure sale, an estate sale, a sale by a foreclosure company and a sale subject to third party approval, all of which indicate atypical seller motivations.¹

In addition, three of the four properties are somewhat older than the Property, which was built in 1985 (compared to 1928, 1949 and 1967). Mr. McMahon, without explanation, made only one slight adjustment for age (“-\$2,000” to the 1928 house) even though age is a factor that can significantly impact market value.

Mr. McMahon arrived at the \$180,802 estimate simply by averaging his adjusted sale prices for three of the properties. Averaging property values does not necessarily prove disproportionality. An appraisal, when professionally performed, is not simply the product of an averaging process, but rather should reflect a reasonable correlation of general sales data to the unique characteristics of a specific property.

The board further notes Mr. McMahon’s stated objective (in the unpaginated “Pricing Strategy” section of his document), advising the Taxpayers that properties “need to be priced aggressively in order to sell” in order to achieve “your primary goal which is a reasonably quick sale.” Lack of sufficient marketing time is another factor that can impact market value. (See fn. 1.)

¹ A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate (13th ed. 2008), pp. 24-25, is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

1. buyer and seller are typically motivated;
2. both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest;
3. a reasonable time is allowed for exposure in the open market;
4. payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and
5. the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

In comparison, the Town concluded the assessment was not disproportional based upon an analysis of sales that are more similar to the Property and were made at arm's length. (See Municipality Exhibit A.) These sales indicate a range of value from \$202,080 to \$215,000. When adjusted by the agreed level of assessment for 2009 (95%), these sales reflect an assessment range of \$192,000 to \$204,200 (rounded), which supports the proportionality of the abated assessment under appeal (\$195,200).

For all of these reasons, the appeal further abatement 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

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Davin and Jeff Pope, 7 Donna Drive, Pembroke, NH 03275, Taxpayers; Chairman, Board of Selectmen, Town of Pembroke, 311 Pembroke Street, Pembroke, NH 03275; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 9/21/11

Anne M. Stelmach, Clerk