

Ila J. Snyder

v.

Town of Stratham

Docket No.: 25100-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$533,900 on Map 16/Lot 15, 26 Winding Brook Drive, a single family home on 1.130 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) an independent appraisal prepared by Paul Brown (the “Brown Appraisal”) estimated the market value of the Property was \$400,000 as of the April 1, 2009 date of assessment (see Taxpayer Exhibit 1, Tab 1);

(2) the Town failed to do an interior inspection of the Property in 2009 yet increased the quality of construction from prior years and there were no physical changes made to warrant such a change;

(3) the Property is constructed of only average quality materials, not excellent as rated on the assessment-record card (“ARC”); and

(4) the best evidence of market value is the Brown Appraisal and the assessment should be reduced to \$405,300 (\$400,000 divided by 98.7%, the level of assessment).

The Town argued the assessment was proper because:

(1) the Brown Appraisal is flawed and should be given no weight as no adjustments were made for the size of comparable sales 4, 5 and 6, no adjustments were made for condominium and cluster type developments (comparable sales 3 and 5), and Mr. Brown did not confirm any of the sales with a party related to the transaction;

(2) the Property is in an upscale neighborhood of custom homes, which is superior to the comparable sales utilized in the Brown Appraisal and this difference was not properly adjusted for; and

(3) the Town submitted nine comparable sales that, when properly adjusted for physical differences, support the proportionality of the Property’s assessed value and the appeal should be denied.

The parties agreed the level of assessment was 98.7%, the median ratio calculated by the department of revenue administration. To assist in its deliberations, the board viewed the exterior of the Property and all comparable sales (submitted by the Taxpayer and the Town) on July 30, 2012.

Board's Rulings

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

To determine whether a tax abatement is warranted based on disproportionality, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), not 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 market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence 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. at 68; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board reviewed the evidence submitted by the parties in great detail and finds it can place little weight on the Brown Appraisal for a number of reasons. First, the board agrees with the Town that the Property is located in an upscale or executive neighborhood, which is a different type of location than the neighborhoods the comparable sales are in; no adjustment was made for this factor. The board reached this conclusion based on the Town’s evidence, which was confirmed by the board’s own view of the Property and all comparable sales utilized in the Brown Appraisal and by the Town. (See Municipality Exhibit A.) Second, the Brown Appraisal made very specific dollar adjustments for “Quality of Construction.” However, these adjustments were based on the difference in the assessed values of the properties, not on market

data. For instance, Mr. Brown indicated his opinion the appropriate quality rating of the Property was “Average + 20”, and comparable number 1 was “exc+10”; therefore, he made an adjustment of \$154,700, which represents the difference in assessed values between the two grades. The board finds this is improper methodology, as any adjustments for physical characteristics should be based on what buyers would pay for that characteristic, not what the Town’s assessment model determined was its appropriate contributory value.¹ Additionally, Mr. Brown determined the quality of the Property was not correctly rated on the ARC, but based his adjustments to the comparable sales on the grading utilized on their ARCs. This is somewhat contradictory as he determined the Property’s ARC was incorrect, but that all the information on the comparable sales ARCs was correct. He did so without independently determining the correctness of the grading for the comparable sales and without confirming those sales. Independent confirmation of the comparable sales data is a crucial step in allowing the board to determine if the information regarding the comparable sales are correct and if they were arm’s-length in nature.

The board finds the Town’s application of neighborhood codes and the resulting land values were applied in a generally consistent manner. Further, the descriptions of the neighborhoods testified to by the Town’s Assessor (Ms. Andrea Lewy) at the hearing and the photographs contained in Municipality Exhibit A were confirmed during the board’s view on July 31, 2012. The Town testified the Property’s assessment was arrived at using the same methodology used in assessing other properties in the Town and supported its value through the

¹ In order to be proportional, assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

comparable sales submitted. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all these reasons, 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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gordon Snyder, P.O. Box 404, Raymond, NH 03077, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885.

Date: December 13, 2012

Anne M. Stelmach, Clerk