

David B. Clem

v.

Town of Greenville

Docket No.: 25146-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” tax year 2009 abated assessment of \$170,600 (land \$76,500; building \$94,100) on Map 6/Lot 64, 19 Baker Avenue, a two-family home on 0.53 acres (the “Property”). For the reasons stated below, the appeal for further 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 abated assessment was still excessive because:

- (1) he purchased the Property for \$80,000 on July 19, 2009, after it was on the market for a very long time (originally at a price of \$179,000) from a “bank” (after the bank had purchased the Property at an auction for \$40,000 and then re-listed it until it sold for \$80,000);
- (2) an FHA appraisal obtained to purchase the Property prepared by Jack Lavoie (Taxpayer Exhibit No. 2) estimated the market value as of July 7, 2009 to be \$125,000; and
- (3) the assessment should be abated further to reflect a \$125,000 market value.

The Town argued the abated assessment was proper because:

- (1) the Taxpayer purchased the Property on July 22, 2009 from the Federal National Mortgage Association (“Fannie Mae”), approximately four months after the assessment date, and the Town considered the sale to be “unqualified”;
- (2) the Town reduced the assessment from \$218,700, first to \$207,900 and then to \$170,600 to reflect the condition of the land and the building, applying an additional 20% economic depreciation to the building;
- (3) the Lavoie Appraisal relied upon by the Taxpayer contains flaws, including the substantial building quality adjustments made and the fact one comparable (#2) was a foreclosure sale and should be disregarded and, when these flaws are corrected, the Lavoie Appraisal actually supports the Town’s abated assessment; and
- (4) the Town’s own sales analysis (Municipality Exhibit B) supports the indicated market value based on the abated assessment (\$170,600) and no further abatement is warranted.

The parties agreed the level of assessment in the Town was 104% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove a further abatement is warranted. The appeal is therefore denied.

Assessments must be based on market value, adjusted by the level of assessment in the Town. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). To prevail on this appeal, the Taxpayer had the burden of proving the market value of the Property was less than \$164,000, rounded ($\$170,600 \text{ divided by } 104\% = \$164,038$).

The Taxpayer purchased the Property from Fannie Mae after it had been on the market for over two years, originally priced at \$179,000. Acknowledging the purchase price (\$80,000) was less than the Property was worth, the Taxpayer asserted at the hearing the market value at the time of purchase was \$125,000, relying on this value estimate in the Lavoie Appraisal. The Town, however, pointed to flaws in the Lavoie Appraisal that were not answered or explained and weakened the validity of his estimate.

These flaws included the use of a bank sale (comparable #2, 8 River Street), which is not indicative of market value according to the Town and should be excluded from consideration. In addition, the Lavoie Appraisal noted this property “was in (p)oor condition and needed . . . major structural and roof work.” Therefore, assigning only a “+\$25,000” adjustment for condition is very questionable.

7 Main Street was used both by the Town and the Lavoie Appraisal (as comparable #1) in estimating the market value of the Property. The Town disagreed with the Lavoie Appraisal, however, regarding the relative condition of 7 Main Street compared to the Property. The board finds merit in the Town’s conclusion that 7 Main Street is not “Superior” to the Property and therefore the “-\$25,000” adjustment is not warranted. When this adjustment is removed, the

indicated value of 7 Main Street becomes \$167,000, very close to the equalized value of the Property (\$164,000, rounded).

The board agrees 7 Main Street is the best comparable to the Property, based on the information contained on the assessment-record cards and its age (119 years), which is quite similar to the Property (129 years) and probably has comparable condition issues. From the photographs, the board notes the Property appears to have more ‘curb appeal’ and advantageous off-street parking than 7 Main Street. 7 Main Street is a much smaller lot (0.23 acres) with cramped off-street parking (for 4 units), compared to the Property which is 0.53 acres and, according to the Lavoie Appraisal, has “ample” parking which this appraiser considered a “key amenity in the local rental market.”

Comparable #3 (200 Page Hill Road) is from another municipality (New Ipswich), sold for \$230,000 in June, 2009 and had an adjusted value in the Lavoie Appraisal of \$175,000, more than the indicated market value of the Property (\$164,000, rounded). If comparable #2 is excluded, Mr. Lavoie’s three remaining comparables had adjusted values ranging from \$124,000 (comparable #4) to \$175,000 (comparable #3).

In contrast to the Lavoie Appraisal, the Town’s analysis contained in Municipality Exhibit B is more complete and better supported. The Town used five other comparables (in addition to 7 Main Street), all located within the Town, some of which were single-family homes, reasoning the Property can be used as a single-family if the Taxpayer chose to do so. (At present, the Taxpayer is renovating and occupying the Property and has not yet rented any part of it to a tenant.) As stated in the Town’s analysis, the “comparable sales indicate a range of value of \$165,940 to \$209,390” and the indicated value of the Property (\$164,000, rounded, based on

the abated assessment of \$170,600) is slightly below this range, indicating it is “fair and equitable.” The board agrees.

For all of these reasons, the board finds the Taxpayer failed to meet his burden of proving a further abatement is warranted. The appeal is therefore 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

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David B. Clem, 19A Bunker Avenue, Greenville, NH 03048, Taxpayer; Chairman, Board of Selectmen, Town of Greenville, PO Box 343, Greenville, NH 03048; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 11/29/11

Anne M. Stelmach, Clerk