

Michael and Susan Losapio

v.

Town of Kensington

Docket Nos.: 25393-09PT/25964-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 and 2010 assessments of \$377,800 (land \$174,600; building \$198,500; features \$4,700) on Map 9/Lot 12-1, a single family home on 1.58 acres (the “Property”). For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the Property should be assessed at \$120 per square foot based on an “Assessment Ratio Analysis” using comparable sales (Taxpayer Exhibit No. 1, the “Analysis”); and

(2) the Property's market value based on the Analysis was \$299,900 in each tax year and an abatement should be granted based on that value and the Town's level of assessment.

The Town argued the assessments were proper because:

(1) the Analysis does not provide a valid indication of value because of the lack of adjustments for dissimilarities between the Property and the comparable sales; and

(2) a "Sales Comparison" (Municipality Exhibit A) indicates the Property is proportionately assessed and no abatement is warranted.

The parties stipulated the level of assessment in tax years 2009 and 2010 were the same at 113.9%, the median ratios determined by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the Property was disproportionately assessed in tax years 2009 and 2010. The appeals are therefore denied.

The Taxpayers contend the Analysis indicates the Property's assessment should be no more than \$120 per square foot applied to the effective living area (2,573 square feet). The Taxpayers assert the per square foot value is based on four comparable sales, each of which were used by the Town in its Sales Comparison and all of which were cape-style dwellings. If the \$120 per square foot value is applied to the Property, the market value indication is \$308,800 (rounded) for each tax year. Applying the Town's 113.9% level of assessment to this market value estimate yields a \$351,723 assessed value, about seven percent less than the assessments under appeal.

The board, however, finds the Analysis does not meet the Taxpayers' burden of proving the Property is disproportionately assessed. Assessments must be based on market value and to

merely list the properties and then average their per square foot costs based on their selling prices without making any adjustments for dissimilarities between the Property and the comparable sales does not yield a reliable indication of market value on which a valid, supportable assessment can be based.

In support of the assessment, the Town submitted a Sales Comparison report which compared the Property to seven comparable sales. The board finds the Town's Sales Comparison provides a more reliable indication of market value and is more thorough in adjusting the comparable sales to account for the dissimilarities between them and the Property. The Town adjusted for differences in location, gross living area, number of bedrooms and bathrooms, unique heating or air conditioning factors, effective age of the comparable sales, the quality of construction and the condition of the various improvements. The board finds this analysis more accurately describes differences the real estate market would recognize in valuing the Property. The Taxpayers did not make any such adjustments.

In Municipality Exhibit A (the Sales Comparison report), the Town noted the equalized market value of the assessment is \$331,700, rounded ($\$377,800$ assessed value divided by 113.9% level of assessment) and this value is close to the middle of the indicated value range of "\$302,670 to \$363,640" estimated by the Town using six comparable sales. This market evidence supports the Town's conclusion that the assessment is not disproportionate.

But even if the board were to restrict the comparison only to the four cape-style dwellings included in both the Taxpayers' and the Town's submissions (42 and 55 Osgood, 33 Highland and 7 Kady Lane), the resulting indication of value (if equal weights are given to the adjusted sale prices of each of these four comparables) is \$321,100, rounded, which is only nominally lower (by \$10,600 or about three percent) than the equalized market value of the assessment. (If

7 Kady Lane, which has a much lower adjusted value and could be considered an ‘outlier’ compared to the other three sales, is excluded or given limited weight, the resulting indication of value is even closer to the equalized market value of the assessment.) The negligible difference resulting from these additional calculations also leads the board to conclude the Taxpayers have not met their burden of proving disproportionality.

For all these reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and the appeals are 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

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: M.P. Losapio & Company, LLC, PO Box 945, Exeter, NH 03833, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Kensington, 95 Amesbury Road, Kensington, NH 03833; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 18, 2011

Anne M. Stelmach, Clerk