

Dustin and Kimberly Lema

v.

Town of Newmarket

Docket Nos.: 25469-10PT/26136-11PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 and 2011 assessment of \$405,300 (land \$96,900; building \$308,400) on Map R4/Lot 25/4, a single family home on 1.17 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted for tax year 2010 and denied for tax year 2011.

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. The Taxpayers carried this burden for tax year 2010, but not for tax year 2011.

The Taxpayers argued the assessment was excessive because:

(1) two appraisals obtained for the purpose of refinancing the Property indicated the market value of the Property was \$375,000 as of July 2, 2012 (Taxpayer Exhibit No. 1, the “Cole

Appraisal”) and \$369,000 as of October 15, 2010 (Taxpayer Exhibit No. 2, the “Driscoll Appraisal”);

(2) the Property is in a subdivision consisting of nine homes, two of which sold in 2010 and 2011 and were qualified as valid sales by the Town (see Taxpayer Exhibit Nos. 3 and 4);

(3) 11 Stonewall sold for \$360,000 in September, 2010 and 3 Stonewall (which is identical to the Property) sold for \$370,000 in June, 2011; and

(4) these appraisals and the sales indicate the assessment should be abated in each tax year based on a market value of approximately \$370,000.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in 2009;

(2) the Town abated the assessment from \$418,600 to \$405,300 by adjusting the depreciation “code” (from “good” to “average”);

(3) the Town maintains good overall assessment equity as shown by the data in Municipality Exhibits B, C and D;

(4) the Taxpayers’ two appraisals were for bank refinancing and thus may not reflect the true market value of the Property;

(5) the assessment-record card for 11 Stonewall indicates the seller had no intent on finishing the basement, was moving to Florida and therefore may have been under duress; and

(6) the appeals should be denied.

The parties agreed the levels of assessment in the Town were 99.9% in tax year 2010 and 106% in tax year 2011, the median ratios calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the market value of the Property for both tax years 2010 and 2011 was \$375,000. Adjusting this market value finding by the level of assessment in each tax year, the board finds, for the reasons indicated below: an abatement should be granted to an assessed value of \$374,600, rounded ($\$375,000 \times 0.999$), for tax year 2010; and no abatement is warranted for tax year 2011. Consequently, the 2010 appeal is granted and the 2011 appeal is denied.

Assessments must be proportional, based on market value and the level of assessment in the Town in each tax year. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportional assessment, all relevant factors affecting market value must be considered, Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) and the board considers and weighs all of the evidence, including the respective appraisals submitted by the Taxpayers and the evidence submitted by the Town, applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and 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 has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it").

Further, in making its findings, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." See, e.g., State of New Hampshire v. Frederick, BTLA Docket No. 23317-07ED (December 3, 2008); cf. Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Company v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. 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).

The board has made findings incorporating what it believes are the most reasonable assumptions for arriving at estimates of the market value of the Property for each tax year based on the evidence presented. As noted above, the Taxpayers presented two appraisal reports which estimated the value of the Property to be \$369,000 as of October 15, 2010 (in the Driscoll Appraisal) and \$375,000 as of July 2, 2012 (in the Cole Appraisal). The two market value opinions are in close proximity to one another and differ by only 2% from high to low over a period of eighteen months. The board finds these appraisals are generally reliable indicators of the Property's value.

The board considered the Town's arguments that the appraisals were not reflective of market value because their intended use was for bank refinancing. The board does not agree. Appraisers, and therefore appraisal reports, are governed by a uniform set of standards commonly referred to as "USPAP." USPAP does not allow the results of an appraisal to be driven by the intended use; instead, these standards regulate the methodology and scope of work of the appraiser to enable him or her to come to an acceptable market value conclusion. The Town presented no evidence either appraiser deviated from USPAP. Further, it would be illogical to assume bank appraisals in general do not reflect market value because such an assumption is contrary to USPAP. As a result, the board reviewed the appraisals as part of the evidence submitted and gave them the weight they deserve.

A market value finding of \$375,000 is supported for both tax year 2010 and 2011 by the evidence presented at hearing. The board notes the Taxpayers testified 3 Stonewall Way was "identical" to the Property. It was stated at the hearing (and further noted on the assessment record cards) the Property's basement was finished (but without heating or cooling) and 3 Stonewall Way has an unfinished basement. 3 Stonewall Way, which sold for \$370,000 on June

23, 2011, is supportive of the board's market value after a slight adjustment for the finished basement on the Property. Finally, one of the Taxpayers stated at the hearing that the market value of the Property did not change between tax years 2010 and 2011.

The board finds the 2010 assessment should be abated to \$374,600, but finds no abatement is warranted for tax year 2011. The 2011 assessment, when equalized, is within 2% of the estimated \$375,000 market value (since \$405,300 assessed value divided by 1.06 level of assessment = \$382,358). This is within an acceptable range of the \$375,000 market value indication. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

If the taxes have been paid for tax year 2010, the amount paid on the value in excess of \$374,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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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: Dustin and Kimberly Lema, 12 Stonewall Way, Newmarket, NH 03857, Taxpayers; Chairman, Town Council, Town of Newmarket, 186 Main Street, Newmarket, NH 03857; and John W. McSorley Consulting, 115 Kelsey Road, Nottingham, NH 03290, Contracted Consulting Firm.

Date: 10/31/12

Anne M. Stelmach, Clerk