

Philip Gault Revocable Trust

v.

Town of Merrimack

Docket No.: 25477-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$191,300 (land \$133,800; building \$57,500) on Map 4C/Lot 037, a single family home on 0.75 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by Philip Gault, argued the assessment was excessive because:

- (1) Mr. Gault lost his mother in 2003, became medically disabled and placed the Property into a trust;
- (2) prior to that time, the Property received a \$125,000 exemption (Taxpayer Exhibit No. 2);

- (3) in 2006, the Town increased the assessment on the Property by \$57,000;
- (4) the real estate market suffered a downturn in 2008 which impacted market values and the assessment is too high;
- (5) a Comparative Market Analysis (Taxpayer Exhibit No. 6) indicates the market value of the Property was only \$128,667 as of May 31, 2011, which is lower than the Taxpayer's own estimate that the market value (as of the assessment date) was in the "\$134,000 range";
- (6) as shown in the photographs presented at the hearing (on Mr. Gault's tablet device), the house has mold in the cellar, cracked foundations, poor insulation, needs a new roof and has other renovation issues (including a need for interior painting) that diminish its value; and
- (7) the assessment should be abated.

The Town argued the assessment was proper because:

- (1) Mr. Gault received a disability exemption of \$75,000 in tax year 2010 (as shown on the assessment-record card) which reduced the tax liability on the Property (Municipality Exhibit C);
- (2) the Town considered the Taxpayer's Comparative Market Analysis but could not give it any weight for the reasons stated on the first page of Municipality Exhibit A;
- (3) Municipality Exhibit A also includes a comprehensive sales analysis that supports the proportionality of the assessment at \$191,300 (the updated assessed value in place since 2006, as shown in Municipality Exhibit C);
- (4) by applying a total of 43.3% depreciation to the building (see Municipality Exhibit C), the Town took sufficient account of the physical conditions noted by the Taxpayer; and
- (5) the Taxpayer did not meet its burden of proving disproportionality.

The parties agreed the level of assessment was 115% in tax year 2010, 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 the Property was disproportionately assessed in tax year 2010. The appeal is therefore denied.

Assessments must be based on market value adjusted by the level of assessment. See RSA 75:1 and Porter v Town of Sanbornton, 150 N.H. 363 (2003). The market value evidence presented is more supportive of the Town's position that the Property was not disproportionately assessed in tax year 2010.¹

The Taxpayer did not present an appraisal or a credible sales analysis, but relied entirely on a Comparative Market Analysis (Taxpayer Exhibit No. 6) prepared by a real estate broker who did not attend the hearing. As noted in the Town's own analysis (see first page of Municipality Exhibit A), the sales relied upon by the Taxpayer are not reliable and do not give a credible indication of value.

One of the assessors testified the Town considered the condition of the Property, concluding it was "fair" relative to its age with an overall quality that was "inferior." Consequently, the Town applied a total of 43.3% depreciation to the building, which the board finds is reasonable based on the evidence presented.

For all of these reasons, the board finds the Taxpayer failed to meet its burden of proving disproportionality in tax year 2010. 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

¹ The board took note of Municipality Exhibit A, where the Town compared the Property to eight sales, made adjustments to those sales and estimated a value range (\$157,800 to \$196,600) with mean and median values of \$172,300 and \$172,400, respectively. When equalized, the assessment under appeal reflects an indicated value of \$166,300, rounded. (\$191,300 assessment divided by 115% level of assessment = \$166,347.80.)

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, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Philip Gault Revocable Trust, c/o Philip Gault, Trustee, PO Box 1103, Merrimack, NH 03054, Taxpayer; Chairman, Board of Selectmen, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 7/24/13

Anne M. Stelmach, Clerk