

Georgitsis Living Trust

v.

Town of Springfield

Docket No.: 25530-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$344,300 (land \$144,100; building \$200,200) on Map 7/Lot 736-223, 175 Oak Hill West Road, a single family home on 6.23 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 appraisal prepared for refinancing purposes estimated the market value of the Property was \$310,000 in September, 2010 (the “Porter Appraisal,” Taxpayer Exhibit No. 2);

(2) this value is supported by two other appraisals prepared by another appraiser and presented by the Taxpayer at the hearing (the “Tracy Appraisals”), one estimating a value of \$320,000 in September, 2008 (Taxpayer Exhibit No. 3) and one estimating a value of \$290,000 in December, 2012 (Taxpayer Exhibit No. 1);

(3) the house on the Property is a “modular home” and the Town’s comparables are “stick built” homes” which the market values more highly than modular construction;

(4) the Property was listed for sale, and the Taxpayer accepted an offer for \$338,000 in September, 2009 (see Taxpayer Exhibit No. 4), but the prospective buyers insisted on renovations estimated to cost \$15,000 to \$20,000, which resulted in backing out of the transaction; and

(5) as stated in the appeal document, the assessment should be abated based upon a market value of \$310,000 (adjusted by the level of assessment in the Town).

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in tax year 2010 and had done a prior revaluation in 2005;

(2) the Property is located in an attractive, private residential subdivision with protective covenants and view easements, as reflected by the documents in Municipality Exhibit A;

(3) a November, 2010 sale for \$425,000 of a neighboring property with similar views of Mount Sunapee two lots away (17 Oak Hill West Road; see Municipality Exhibit A, Tab F) supports the proportionality of the assessment;

(4) the Taxpayer marketed the Property in 2009 for \$368,000 (Municipality Exhibit A, Tab E and the comparable sales used by the Taxpayer’s appraisers include property in other municipalities, underestimate the contributory view value of the Property (see comparable

photographs in Municipality Exhibit B) and, when proper amenity and location adjustments are made, these comparables are actually supportive of the assessed value of the Property;

(5) the Taxpayer's own appraisers did not make any negative adjustment for the Property's modular construction because none is warranted; and

(6) the appeal should be denied.

The parties agreed the level of assessment in the Town was 99.8%, 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. The appeal is therefore denied for the following reasons.

To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that he is paying more than his proportional share of taxes. See RSA 75:1; and, Porter v. Town of Sanbornton, 150 N.H. 363, 367 (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).

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), now 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 Taxpayer presented three appraisals in support of his contention the assessment was disproportionate. The board notes the Taxpayer submitted only the 2010 Porter Appraisal to the Town in support of his abatement application and in his appeal to this board. However, after some discussion of this issue at the hearing, the Town decided not to object to the Taxpayer's submission of the 2008 and 2011 Tracy Appraisals; therefore, the board has also reviewed them in arriving at its decision.

As stated above, the focus of the board's inquiry is proportionality, requiring a review of the 2010 assessment to determine whether the Property is assessed at a higher level than the level generally prevailing. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). 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). The Taxpayer's estimate of market value (\$310,000, based on Mr. Porter's estimate for a refinancing five months after the assessment date) is within 10% of the Property's April 1, 2010 assessment (\$344,300).¹

The board has carefully reviewed the information contained in the Taxpayer's appraisals. Although they are credible opinions, neither appraiser attended the hearing and neither makes proper adjustments for: 1) the contributory value of the Property's view, which is superior to the

¹ If Mr. Porter's estimate is time-adjusted back to the assessment date, the percentage difference would be even less than 10%.

comparables they used; and 2) the upgraded condition of the home. The board finds applying appropriate adjustments for these two features result in higher indications of market value that are supportive of the assessment.

The Town's assessor testified the Property is located in a desirable and protected neighborhood in an 11 lot subdivision known as Oak Hill. As stated in Municipality Exhibit A (p. 2), "[t]here are clear view easement areas [of Mount Sunapee] over portions of the subject and abutting properties that allow for the protection and maintenance of views from the properties and allows for the removal of vegetation within these easement areas every three years." Municipality Exhibit B contains photographs of the views from the Property in support of the contributory value shown on the assessment-record card. In comparison, the Taxpayer's appraisals make only nominal adjustments for this feature that are not truly reflective of the desirable views from the Property, including Mount Sunapee. (See the photographs of Mount Sunapee from the Property in Municipality Exhibit B; see also the Porter Appraisal (p. 5) which describes the home as having "a panoramic mountain view.") The Taxpayer's appraisals also make no adjustments for the protective covenants and deeded view easement rights that benefit the Property which were noted by the Town's assessor at the hearing. (See Municipality Exhibit A, Tabs A and B.)

While the Taxpayer contended the home's condition should be adjusted downward because it was a "modular home," not a ranch, the Taxpayer's three appraisals submitted by the Taxpayer do not support this contention and make no downward value adjustment for this factor. In other words, they note the fact the house is of modular construction, but do not conclude this reduces its value because they agree the Property is of good quality construction.

For example, the 2008 Tracy Appraisal (Taxpayer Exhibit No. 3, p. 1) describes the Property's improvements as follows: "The subject is in good to very good overall condition and is of above average to good quality modular construction, typical of its age and of the neighborhood.... There is less than typical physical depreciation due to normal wear and tear." In comparing the Property to the comparable sales, this appraiser lists the Property as a "Ranch" and compares it to two ranch style and two cape style homes with no adjustments made to any of the comparable sales.

In the 2011 Tracy Appraisal (Taxpayer Exhibit No. 1, p. 1), Mr. Tracy states under the "Improvement Comments:" "Subject is good quality modular construction. Modular homes appear to have achieved good acceptance in the marketplace." In adjusting the comparable sales to the Property, the appraiser notes the home is a modular ranch and compares it to split level, ranch and contemporary homes with no adjustment to any of them.

Similarly, the 2010 Porter Appraisal (Taxpayer Exhibit No. 2, p. 4) describes the Property as a "ranch" and compares it to three ranch style and one cape style homes. The Porter Appraisal (p. 4) further notes: "[S]ubject is a well built, well maintained home in very good condition throughout. Kitchen has highend [sic] cabinets, granite counters, and good appliances. The master bath has two sinks, a spa tub and a separate shower. The basement is finished with drywall, carpet and tile, all in very good condition. The garage interior is finished with quality wood walls. The exterior of the home, including the deck, is in very good condition."

Turning to the Town's evidence, the board finds the assessment is reasonably supported by the market data presented. The Town's assessor further testified the Property was valued in a consistent manner with the all other properties in the municipality for the 2010 reassessment. In

this regard, the Town noted a November, 2010 sale in the same subdivision (117 Oak Hill Road) for \$425,000 and this property had a 2010 assessment of \$401,000, which is also supportive of the assessed value of the Property. A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Barbara and Vasilios Georgitsis, PO Box 940, Lebanon, NH 03766, Trustees of the Georgitsis Living Trust, Taxpayer; Chairman, Board of Selectmen, Town of Springfield, PO Box 22, Springfield, NH 03284; and George Hildum, 2 Sanborn Road, Concord, NH 03301, Contracted Assessing Firm.

Date: 3/4/13

Anne M. Stelmach, Clerk