Robert A. and Maryanne Bartlett

v.

Town of Goffstown

Docket No.: 25572-10PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2010 assessment of $506,800 (land $123,200; building $383,600), 371 Tibbetts Hill Road, on Map 8/Lot 51, a single family home on 3.42 acres (the "Property"). The Taxpayers also own, but are not appealing, Map 11/Lot 15 assessed for $65,600 and the parties stipulated to the proportionality of that assessment. For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) an April 9, 2009 appraisal prepared by Clark H. Ohnesorge ("2009 Appraisal") prepared for Laconia Savings Bank estimated the value of the Property to be $440,000 (Taxpayer Exhibit No. 1);

(2) a February 14, 2011 appraisal prepared by Clark H. Ohnesorge ("2011 Appraisal") for tax abatement purposes estimated the value of the Property to be $450,000 (Taxpayer Exhibit No. 2);

(3) a September 28, 2010 single page Fannie Mae "appraisal report" prepared for refinancing by Langley Appraisals (Taxpayer Exhibit No. 3) estimated the value of the Property to be $430,000;

(4) there is no view from the back of the home because of a 20' upward slope in the back yard;

(5) the assessment includes some value for the geothermal heating system which does not add value to the Property; and

(6) the Town's assessment is high as shown by the three appraisal reports submitted.

The Town argued the assessment was proper because:

(1) the lot is relatively flat and has a view of the Uncanoonic Mountains from the southern side of the lot to the south; the Town agrees the view is obstructed, cannot be seen from the first floor and is limited from the second floor; the assessment-record card states the view would be 30% if visible, but the Town has reduced the adjustment to10% based on the obstructed nature of the view;

(2) the 2011 Appraisal does not time adjust the comparables and a negative 3% per year is supported by the evidence submitted in Municipality Exhibit A;

(3) the Town recognizes that geothermal heat is difficult to appraise, but based on Assessor Bartlett's conversations with realtors, appraisers and on-line research, an adjustment of $10,000 is reasonable;

(4) the hot tub is considered to be an integral part of the real estate because it appears to be built in;

(5) the 2009 Appraisal (Taxpayer Exhibit No. 1) should not be considered by the board because it was prepared for financing purposes; further, the same appraiser (Ohnesorge) prepared Taxpayer Exhibit No. 2 and Mr. Ohnesorge utilized a gross living area of $35 per square foot in the financing report and $50 per square foot in the report for tax abatement purposes;

(6) the 2011 Appraisal, prepared for tax abatement purposes, did not utilize an effective date of April 1, 2010, did not utilize a time adjustment for declining property values, referred to the geothermal heating system as adding value but made no adjustment, and made no adjustments for either the hot tub or the view;

(7) Taxpayer Exhibit No. 3 should not be considered by the board because there is no indication of who the appraiser was, the scope of the appraisal is unknown and is only one page without further explanation; and

(8) the Taxpayers have not met their burden and the appeal should be denied.

The parties agreed the level of assessment in the Town was 103.4%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to show the Property was disproportionately assessed and therefore the appeal is denied.

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

To determine whether an abatement is warranted, the board considers and weighs the market value 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 its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each

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. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

During its deliberations, the board carefully reviewed and considered the significant amount of evidence presented by both the Taxpayers and the Town. A thorough review of the two Ohnesorge appraisals was made. The board noted several differences in the two appraisals which were dated 22 months apart (April 9, 2009 – Taxpayer Exhibit No. 1 and February 16, 2011 – Taxpayer Exhibit No. 2), however, the Taxpayer did not call Mr. Ohnesorge as a witness and therefore he was not available to address those differences and answer questions from the Town and the board. The date of assessment for this appeal is April 1, 2010. Thus, the board must analyze these reports and make its findings based on the date of assessment. The following differences in the appraisals were noted:

	2009	2011
Excess Acreage	$1,000/A	$2,000/A
Gross Living Area (GLA)	$35/sq. ft.	$50/sq. ft.
Full Baths	$5,000/ea.	$8,000/ea.
Garage Bays		
Attached	$6,000/ea.	$8,000/ea.
Under	$2,000/ea.	$3,000/ea.
Time Adjustment	(1/2% per month)	None
Room Count	10/5/3.5	10/4/3.5
Client	Laconia Savs. Bk.	Taxpayers

As a result of the differing adjustments noted in this review and the differing purposes of each appraisal, the board has chosen to rely mainly on the 2011 Appraisal which was prepared for tax abatement purposes. The board also reviewed Taxpayer Exhibit No. 3 but has given it no weight

because the preparer of the "report" was not listed and only one page of the report was presented to the board. The board cannot rely on this exhibit without the entire document to determine the scope of the appraisal and the nature of the comparables and the reasons for the adjustments made and most importantly the credibility of the market value conclusion.

The 2011 Appraisal was prepared on February 16, 2011. As indicated above, the date of assessment was April 1, 2010; thus, adjustments must be considered to reflect a value as of that date. The 2009 Appraisal used a negative 1/2% per month adjustment to its sales but applied no time adjustments in the 2011 Appraisal. The Town testified the single family market was still in a state of decline from 2010 and 2011 and, based on its analysis, (see Municipality Exhibit A) determined a negative 3% per year adjustment was appropriate. The board finds this evidence is reasonable and an adjustment to the comparable sales for time should have been applied by Mr. Ohnesorge.

The 2011 Appraisal noted the Property was improved with a geothermal heating and cooling system but made no adjustments to the comparable properties with conventional heating and cooling systems because of the cost to install the geothermal system. The Taxpayer, Mr. Bartlett, also testified there was no data supporting the geothermal system added any value to the Property. Tab E of Municipality Exhibit A contains several pages from a website Home Air Plus, Inc. which specializes in geothermal heating. This site states: "[a]ccording to the U.S. Environmental Protection Agency, geo-exchange systems save homeowners 30-70 percent in hearing costs, and 20-50 percent in cooling costs, compared to conventional systems! Geothermal heating and cooling is the most energy-efficient, environmentally clean, and cost-effective space conditioning system available." Further "[g]eo-exchange systems also save money because they require much less maintenance. In addition to being highly reliable they are built to last for decades and can add considerably to the resale value of a structure." (Emphasis added.) The contact is listed as Home

Air Plus, Inc. at 371 Tibbetts Hill Rd Goffstown, NH 03045, the Property's address. Additionally, at Tab E, EnergyHomes.Org states "geothermal heating/cooling systems can reduce utility bills by 40% to 60%. The payback for a system can range from 2-10 years, while the lifetime of a system can be 18-23 years, almost double a conventional system. Additionally renewable energy systems add value to the equity of your home." (Emphasis added.) Based on this data, the board finds an adjustment should be made for the geothermal system and finds the $10,000 testified to by the Town is reasonable.

The 2011 Appraisal also made no adjustments to the comparables for the Property's partial view listing its view as "Neighborhood." The Town compared the Property with four, smaller parcels on Horizon Drive with superior views. The range of land assessments for those properties was $136,600 to $149,400 while the Property's land assessment is $123,200 (which includes a 10% adjustment to the land value for "view to side." To support its land value, the Town looked to the 2011 Appraisal's cost approach. In that approach, Mr. Ohnesorge valued the land at $90,000 for the site and $35,000 for the value of site improvements for a total of $125,000. As stated by the Town, the equalized value of the land is $119,100 ($123,200 divided by 103.4%), less than the land value determined by Mr. Ohnesorge in his cost approach which the Town asserts is indicative of its value for the partial view.

Last, the 2011 Appraisal gave no consideration to the value of the hot tub which the Town has considered an integral part of the real estate as it is built in. The board finds assessing this value is reasonable.

In summary, the board has reviewed all of the evidence submitted. Applying appropriate adjustments to the 2011 Appraisal as indicated above is generally supportive of the assessment and the abatement, therefore, is 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

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Michele E. LeBrun, Chair

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert A. and Maryanne Bartlett, 371 Tibbetts Hill Road, Goffstown, NH 03045, Taxpayers; and Chairman, Board of Selectmen, Town of Goffstown, 16 Main Street, Goffstown, NH 03045.

Date: 2/5/13

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Anne M. Stelmach, Clerk