

Gloria Guyette

v.

City of Portsmouth

Docket No.: 25631-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$504,200 (land \$325,600; building \$178,600) on Map 103/Lot 87, a single family home located at 7 Hancock Street on 0.24 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) although the building assessment is proportionate, the land value is excessive;
- (2) the Property is located in the historic district of the City on a street with private single family residences and museum lots;

(3) prior to the 2010 revaluation, the Property was identified by the City as neighborhood 101 but during the course of the revaluation, it was merged without justification into neighborhood 108 which increased its land assessment;

(4) the Property abuts a lot owned by Strawberry Banke Museum and a 100-car parking lot is across the street which services as a “Johnny station” for any event with a line-up of porta-potties; further, Strawberry Banke Museum is event driven and the street is “clogged” with the only entrance to get into the parking lot;

(5) the Property is in the mixed residential office (“MRO”) zone which zone receives lesser services than other zones in the City;

(6) the land site index should be changed from 2.6 to 2.2 or 2.25; and

(7) the market value of the Property is estimated to be \$450,000 at best.

Subsequent to the Taxpayer’s testimony, the City motioned to dismiss the appeal based on the Taxpayer’s failure to show any evidence of disproportionality and her focus only on the land value, not the value of the Property as a whole. The board reserved ruling on the motion until this decision was issued.

The City argued the assessment was proper because:

(1) the Property is located within the historic Strawberry Banke area in close proximity to Market Square and various destination attractions and recreations centers;

(2) the Property is located in a very desirable neighborhood where few properties sell and therefore, it was necessary for the City to conduct a sales ratio analysis using comparable properties in other neighborhoods with similar market appeal;

- (3) the City's 2010 sales' analysis performed for the 2010 revaluation included five comparables which sold between April 1, 2009 and March 31, 2010 (Municipality Exhibit A) which, when analyzed with the Property, supports the assessment;
- (4) the assessor determined Hancock Street was in the wrong neighborhood in the prior revaluation which was corrected in the 2010 revaluation;
- (5) the City asked repeatedly to view the interior of the Property but the Taxpayer declined; the house is graded by the City as average at the low end of the "B" scale and typically the majority of homes in the neighborhood are "B+" and A+" properties;
- (6) the site index factor is applied to the neighborhood as a whole, not just to the street; and
- (7) the City's feels the assessment on the Property is too low based on its research and the appeal should be denied.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value, as prescribed in RSA 75:1. The Taxpayer did not present any credible evidence of the Property's market value. To carry her burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the City. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

To determine whether the Taxpayer has met this burden of proving disproportionality, the board considered and weighed 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, “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).

Further, in making a decision on value, the board looks at the Property’s value as a whole (i.e., as land and buildings together) because this is how the market views value. The supreme court has held the board must consider the Taxpayer’s entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Even if the Taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007).

The Taxpayer argued the neighborhood index and zone were improper and resulted in the assessment being disproportionately high. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The City’s update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

Based on all of the evidence presented, the board finds the Taxpayer failed to carry her burden to show the assessment was disproportionate. The board, therefore, grants the City's motion to dismiss the appeal.

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

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gloria Guyette, 7 Hancock Street, Portsmouth, NH 03801, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth, 1 Junkins Avenue, Portsmouth, NH 03801.

Date: 5/30/13

Anne M. Stelmach, Clerk