

Lisa M. Statchen

v.

Town of Merrimack

Docket No.: 25825-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$270,000 on Map 6A-1/Lot 030, a single family home on 0.919 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) the Property was purchased in February 2011 with a sale price of \$169,900 with \$8,000 in closing costs paid by the seller;
- (2) an independent appraisal (the “Bouchard Appraisal”) obtained for financing purposes concluded the Property had a market value of \$190,000 as of December 2010;

(3) the comparables utilized by the Town in defense of the assessed value are not comparable to the Property in terms of quality of construction and condition;

(4) the Property is only in average condition and needs new windows, new siding and roof repairs and/or replacement; and

(5) the assessed value of the Property should be reduced to \$218,500 (based on a market value estimate of \$190,000 adjusted by the level of assessment).

The Town argued the assessment was proper because:

(1) based on a sales analysis using five comparable sales which, after appropriate adjustments were made, provided a range of market value estimates from \$222,967 to \$251,190, which is supportive of the equalized assessed value of \$234,800 ($\$270,000 / 1.15$);

(2) the Property is in a neighborhood with beach rights and access to the Four Seasons Association on Baboosic Lake, and based on the Town's analysis, this feature adds approximately \$10,000 in value;

(3) the Bouchard Appraisal presented by the Taxpayer did not consider any adjustments for beach rights and water access, all of the comparable sales were significantly smaller than the Property and the appraiser utilized a low adjustment of \$25 per square foot; and

(4) if the appropriate adjustments and corrections were made to the comparable sales utilized in the Bouchard Appraisal, the value conclusion would likely be supportive of the equalized assessment.

The parties agree the level of assessment was 115% as of the April 1, 2010 assessment date, the median ratio as calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry her burden of proving disproportionality and the appeal is denied.

The Taxpayer purchased the property in December, 2010 for \$169,900 from Wells Fargo, who acquired it through foreclosure. The Taxpayer stated "I know I got somewhat of a deal" and did not rely on the purchase price as her primary evidence of market value. Instead, she provided the Bouchard Appraisal (which was obtained for financing purposes), which estimated the market value of the Property was \$190,000. The Taxpayer testified the Property was in "pretty good" condition for a foreclosed property, but it was dated and in need of updating. However, when questioned by the board regarding what work was done prior to moving into the Property and the Taxpayer indicated it was in move in condition. Additionally, since the purchase only minor cosmetic work has been completed.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. 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). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The Taxpayer's argument of disproportionate assessment relied upon the Bouchard Appraisal, which estimated the Property had a market value of \$190,000 as of December 2010,

eight months after the April 1, 2010 date of assessment, during a period of declining real estate values. The board finds it can place little weight on the Bouchard Appraisal for a number of reasons. First, the Taxpayer could not answer questions regarding the appraiser's adjustments and methodology. Second, the appraiser did not attend the hearing and therefore could not address questions from the Town and board. Third, the appraisal utilized a "short sale" (Comparable Sale No. 3) which, without further information, raises questions regarding whether or not it was an arm's-length transaction. Fourth, the board agrees with the Town an adjustment for water/beach access should be made. Fifth, and most significantly, the board finds the Bouchard Appraisal understates the contributory value of the Property's finished basement. The Property is a "split-level" house, the basement is partially above grade and has windows on the front and rear as well as an exterior door. While the quality of the finish of the basement is somewhat inferior to the first floor, the board finds a typical buyer would pay more than the \$2,000 to \$8,000 adjustments made in the appraisal for this feature, which almost doubles the living space in the Property.

The board finds that if appropriate adjustments were made to account for the declining market conditions between the date of assessment (April 1, 2010) and the effective date of the appraisal (December 2010), beach rights/water access and the finished basement, the Bouchard Appraisal would likely be supportive of the assessed value, adjusted by the level of assessment.

As the board finds the Taxpayer did not carry her burden of proving disproportionality, the board need not comment on the Town's evidence. For all these reasons, the appeal 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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lisa M. Statchen, 14 Four Seasons Lane, 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: 12/11/12

Anne M. Stelmach, Clerk