

Robert Dinsmore

v.

Town of Merrimack

Docket No.: 26112-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2011 assessment of \$312,200 (land \$133,100; building \$179,100) on Map 6D /Lot 101, 18 Constance Street, a duplex-style home on 0.803 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 argued the assessment was excessive because:

- (1) a September 17, 2011 appraisal prepared by Brian Bartlett, a licensed real estate appraiser, expressed an opinion of market value of the Property of \$270,000 (the “Bartlett Appraisal”, Taxpayer Ex. No. 1) and this is the best evidence of market value;
- (2) the Bartlett Appraisal utilized the sales of properties from other towns (Hudson, Milford, Goffstown and Litchfield) and this was appropriate due to the limited number of sales of duplexes in Merrimack;
- (3) the assessment record card (“ARC”) is incorrect and indicates it is improved with a two-story garage, while in fact it is only a storage shed with a garage-style door; and
- (4) the assessment should be abated to \$270,000 (the opinion of market value arrived at in the Bartlett Appraisal), adjusted by the level of assessment.

The Town argued the assessment was proper because:

- (1) the Bartlett Appraisal stated the Taxpayer collects \$1,525 per month for the rental unit, which, when appropriate expenses are deducted and the net income is capitalized, provides an indication of market value that is supportive of the proportionality of the assessed value;
- (2) the Bartlett Appraisal estimated the market rent for the Property was \$1,300, which is too low and should be adjusted upward;
- (3) the sales comparison approach in the Bartlett Appraisal did not adequately adjust for the differences between the Property and the towns of Hudson, Litchfield, Goffstown and Milford;
- (4) the Bartlett Appraisal adjusted for differences in size between the Property and the comparable sales based on \$20 per square foot and \$10,000 for a two-car attached garage, both of which are too low;

(5) the Town prepared a sales comparison approach utilizing the sale of three properties in the Town, which when differences are appropriately adjusted for, support the proportionality of the assessment (see Municipality Ex. A);

(6) the Town also completed an income approach to value utilizing a market rent estimate of \$1,525 per month (based on the rent stated in the Bartlett Appraisal) which is supportive of the proportionality of the assessed value (see Municipality Ex. A, p. 5 unnumbered); and

(7) the appeal should be denied.

The parties agreed the level of assessment in the Town was 101.4% in tax year 2011, the median ratio calculated by the department of revenue administration.

During deliberations, the board determined it would be appropriate to direct its RSA 71-B:14 review appraiser to perform an appraisal and develop an independent opinion of value of the Property. See Appeal of Sokolow, 137 N.H. 642 (1993). The review appraiser's report was filed by Cynthia L. Brown (the "Brown Report") on May 22, 2014 and the parties were provided twenty (20) days to file any comments before the board finalized its deliberations considering all the evidence including the Brown Report. The Brown Report estimated a market value of the Property of \$297,000 as of April 1, 2011 based on the sales comparison and income capitalization approaches to value. Loren J. Martin, President of Avitar Associates of New England, Inc. filed a response dated June 3, 2014 on behalf of the Town. No response was received from the Taxpayer.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not meet his burden of proving disproportionality and therefore the appeal is denied.

“In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town.” Id. at 643. Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. 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 met his burden of proving disproportionality, the board considered and weighed all of the evidence presented, including the Brown Report, 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).

The Taxpayer relied upon the Bartlett Appraisal, which estimated a market value of \$270,000 as of September 17, 2011, approximately five and one-half months after the April 1, 2011 date of assessment. It relied on the sales comparison approach which utilized comparable sales and one active listing of duplex-style properties located in Merrimack, Hudson, Milford, Goffstown and Litchfield. The appraiser made adjustments for market conditions, location and

other physical characteristics, and the comparable sale properties provided market value indications ranging from \$265,600 to \$293,000. (See Taxpayer Exhibit No. 1.) The Bartlett Appraisal reconciled to a market value estimate of \$270,000, which is near the low end of the indications.

The Town argued the assessed value was proportionate and submitted a Comparable Sales Report which utilized the sales of three single-family residences in the Town as support. The comparable sales are “larger” single-family homes, therefore an adjustment of (\$25,250) was made as “someone looking to purchase this home and occupy one side and rent the other would likely consider its modest living space as compared to a single family home of similar size.” (See Municipality Exhibit A.) The board could not place material weight on the Town’s Report, however, as the comparable sales used were single-family residences and are not appropriate for comparison to a duplex-style residence such as the Property as they typically appeal to a different buyer and have distinctly different highest and best uses.¹

The Brown Report also employed the sales comparison approach and selected three sales of duplex-style properties to compare to the Property: one each in Hudson, Milford and Amherst. The three comparable properties sold between October, 2009 and March, 2011 and had sales prices ranging from \$225,000 to \$269,000. After adjusting for market conditions and physical characteristics, the three sales provided a range of market value indications for the Property, as of April 1, 2011, of \$290,800 to \$302,000. (See Brown Report, p. 9.)

In addition to the sales comparison approach, the Brown Report utilized the income capitalization approach to value, which was premised upon an estimated monthly market rent of

¹ The board recognizes the sales of single family residences were utilized due to a lack of duplex-style sales in the Town. However, a more appropriate methodology would be to utilize sales of duplexes from other municipalities and make any appropriate locational adjustments.

\$1,300 per unit (based on an analysis of comparable rental properties), or \$31,200 annually.

After deducting for vacancy and collection allowances and operating expenses, Ms. Brown calculated a net operating income of \$26,676. Utilizing a capitalization rate of 9%, Ms. Brown arrived at a market value indication for the Property of \$296,400. (See Brown Report, p. 13.²)

After consideration of all evidence presented, the board finds the Brown Report is the best evidence and \$297,000 is an appropriate estimate of market value for the Property as of April 1, 2011 (for an indicated assessment of \$301,200 ($\$297,000 \times 1.014$)). The most likely buyer of the Property would be an owner-occupant who would utilize the rental income from the second unit to offset mortgage expenses. Therefore, the sales comparison approach to value provides the most credible indication of market value. The selection of comparable sales in the Brown Report was reasonable, and the adjustments made were generally well supported.

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). A market value finding of \$297,000 and an indicated assessment of \$301,200 results in a difference of 3.5% from the 2011 assessment of \$312,200. The board finds this is a reasonable estimate of the Taxpayer's tax burden, and therefore the appeal is denied. RSA 76:17-c, I and II.

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

² After filing her report, Ms. Brown discovered an error in her income approach to value and filed a May 27, 2014 letter detailing the error. This correction, however, did not change her final opinion of value of \$297,000.

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: Robert Dinsmore, 18 Constance Street, 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: 7/11/14

Anne M. Stelmach, Clerk