Toivo Saari

v.

Town of Harrisville

Docket No.: 26115-11PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2011 abated assessment of $128,200 (land $65,000; building $63,200) on Map 32/Lot 35, 26 Kadakit Street, a duplex residential property on a 3.0 acre lot (the "Property"). For the reasons stated below, the appeal for further 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 (deceased), represented by his brother Allan R. Saari, a licensed real estate broker and administrator of his estate (see Taxpayer Exhibit Nos. 3 and 4), argued the abated assessment was still excessive because:

(1) an appraisal prepared for probate (the "Monadnock Appraisal," Taxpayer Exhibit No. 2) estimated the market value of the Property was $115,000 in October, 2011 and the Property was sold in February, 2012 for $100,000;

(2) other properties in the Town sold for far less than their assessed values; and

(3) the assessment should be abated to $100,000 (adjusted by the level of assessment in the Town).

The Town argued the assessment, as abated, was proper because:

(1) the Town inspected the Property on November 11, 2011 in response to an abatement application and abated its assessment to $128,200 (from $155,400) for the reasons stated in Municipality Exhibit A, Tab C (including the relatively poor condition of the Property noted by the Taxpayer's representative);

(2) the February, 2012 sale of the Property for $100,000 was treated as an "unqualified sale" because of limited market exposure, the fact it was a "cash" transaction (no financing) and only "fiduciary covenants" (common in an estate sale) were provided to the buyer;

(3) the Town reasonably concluded the $100,000 purchase price in February, 2012 under these conditions did not reflect the Property's market value as of the April 1, 2011 assessment date;

(4) the Monadnock Appraisal utilized sales from other towns which were not reflective of market value and the value estimated in this appraisal ($115,000) is actually supportive of the abated assessment under appeal adjusting for the level of assessment in the Town in 2011 ($115,000 estimated market value x 109.1% level of assessment = $125,400, rounded, indicated assessment); and

(5) the appeal should be denied.

The parties agreed the level of assessment in the Town for tax year 2011 was 109.1%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeal is therefore denied for the following reasons.

As prescribed in RSA 75:1, ad valorem assessments must be based on market value and proportionality is determined by arriving at a reasonable estimate of 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).

After inspecting the Property and taking its relatively poor condition into account, the Town substantially abated the assessment for tax year 2011 at the local level. (See Municipality Exhibit A, Tab C). The Town also provided evidence that it used a consistent methodology in assessing the Property and four other properties on the same street and that a qualified vacant land sale is also supportive of the assessment. (Id., Tabs E and F.) A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The board considered Mr. Saari's arguments. He alluded to other properties with assessments allegedly above their market values and his statements that the Town had obtained title to several properties for "back taxes" owed and unpaid (presumably because those properties were overassessed). These arguments, however, do not support the conclusion that the Property was disproportionally assessed because alleged discrepancies in the assessments of

other properties do not mean the Property was disproportionally assessed. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

Both the Town and the board considered the Monadnock Appraisal presented by Mr. Saari. This appraisal estimated a market value of $115,000 as of October 14, 2011. The preparer of this appraisal did not attend the hearing to answer questions regarding his choice of comparables and his methodology. He compared the Property to three properties in other towns (Dublin, Chesterfield and West Chesterfield). Because the Dublin property was "bank owned" and "fire damaged," the Chesterfield property was "in an estate" and the West Chesterfield property was "bank owned," the Town reasonably concluded use of these sales resulted in a lower estimate not reflective of market value. In addition, the Monadnock Appraisal recognized the Property is a duplex, but compared it to single-family homes without making any adjustment for this difference.

Even if accepted at face value, however, and without any adjustment for time (change in market conditions in the 6½ months between the assessment date and the appraisal date), the market value estimate in the Monadnock Appraisal actually supports the proportionality of the Town's abated assessment on the Property. A market value estimate of $115,000 adjusted by the level of assessment in the Town (109.1%) results in an indicated assessment of $125,500, rounded, within 2% the $128,200 abated assessment). 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 a proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The board finds merit in the Town's other arguments that the sale of the Property in February, 2012 for $100,000 does not support the Taxpayer's claim for a further abatement in

tax year 2011. As the Town pointed out, the Property was purchased after it was marketed for only a very short time, the purchase was for "cash" and was subject to the fiduciary covenants associated with an estate sale. These factors lessen the credibility of the purchase price as a valid indicator of market value.

For all of these reasons, the appeal for further abatement in tax year 2011 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, <u>not the date this decision is received</u>. 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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Albert F. Shamash, Member

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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: Allan R. Saari, 493 Breed Road, Harrisville, NH 03450, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Harrisville, 705 Chesham Road, Harrisville, NH 03450-5529.

Date: May 29, 2014

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Anne M. Stelmach, Clerk