

Wayne and Maria Leighton

v.

Town of Kingston

Docket No.: 26149-11PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2011 abated assessment of \$308,600 (land \$141,000; building \$167,600) on Map R4/Lot 8/26, a single-family home on 2.220 acres (the “Property”). The Taxpayers also own, but are not appealing, two commercial condominiums each assessed at \$119,800.¹ For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

¹ The two nonappealed properties are identified as Map R4, Lots 21-7 and 21-8. At the hearing, the Town stipulated to the proportionality of the assessments on the nonappealed properties.

One of the Taxpayers, Mrs. Maria Leighton, argued the abated assessment was still excessive because:

- (1) the Property has multiple issues that adversely affect its condition, including no finished flooring (carpet) or baseboard trim, windows and sliding doors that leak and need replacement, rotted plywood subfloors, a roof that is “in bad shape” and a pool that does not “hold water” and is unusable;
- (2) in addition, the steepness of the lot adversely affects the Property’s market value because it reduces the usability of the front yard and resulted in a steep driveway that is difficult to navigate in the winter;
- (3) three real estate brokers completed competitive market analyses (in Taxpayer Exhibit No. 2) estimated the market value of the Property was below the equalized assessed value; and
- (4) an assessment based on a market value of \$211,800 is reasonable.

The Town, represented by Fred Smith of Purvis and Associates (the Town’s contract assessing firm), argued the assessment was proper because:

- (1) there is no dispute regarding the adverse conditions of the Property testified to by the Taxpayer;
- (2) the Town inspected the Property in May, 2012 in response to the Taxpayers’ abatement application and abated the assessed value by adjusting the land for topography and the quality of the building from good to average (resulting in a 13% depreciation factor); and
- (3) the Town’s board of selectmen concluded no further abatement is warranted and the appeal should be denied.

The parties did not dispute the level of assessment in the Town in tax year 2011 was 118.1%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers met their burden of proving disproportionality. The assessment for tax year 2011 is abated to \$248,000, rounded, for the following reasons.

Assessments must be based on market value. See RSA 75:1. To succeed on a tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing that the Taxpayers' Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. 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, 67-68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Mrs. Leighton presented undisputed testimony regarding the poor conditions of the house (referenced above). The board considered all of this testimony and reviewed the notations on the Town's assessment-record card ("ARC"). Using its judgment and experience, the board finds the following additional adjustments are warranted to make the assessment proportional:

- (1) because of the topography issues, the land condition adjustment should be changed from 95% to 75%;
- (2) a temporary depreciation factor of 15% should be applied to the building; and
- (3) the pool listed as an extra feature should have a condition factor of 50% rather than 80%.

Making these adjustments results in an abated assessment of \$248,000, rounded. This abated assessment implies a market value indication for the Property of \$210,000, which is not inconsistent with the high end of the range of values indicated by the broker's opinions of value submitted by the Taxpayer. (See Taxpayer Exhibit No. 2.)

For all these reasons, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$248,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years.

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 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

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Wayne and Maria Leighton, PO Box 911, Kingston, NH 03848, Taxpayers; Chairman, Board of Selectmen, Town of Kingston, PO Box 716, Kingston, NH 03848; and Brett S. Purvis & Associates, Inc., c/o Allison Purvis 1195 Acton Ridge Road, Acton, ME 04001 Contracted Assessing Firm.

Date: 8/12/14

Anne M. Stelmach, Clerk