

Robert Boettcher

v.

City of Manchester

Docket No.: 26153-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2011 assessment of \$234,200 (land \$65,400; building \$168,800) on Map 782/Lot 10, 959 Iris Street, a single-family, cape-style home on 0.17 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) the Property is located on the “West Side” of the City, where market values have been impacted by the lower test scores of students and lower graduation rates at “West High School” (see Taxpayer Exhibit No. 2);

- (2) Taxpayer Exhibit No. 1 presents sale price and assessment information regarding cape-style homes and demonstrates the Property was overassessed in tax year 2011;
- (3) while the Taxpayer would have been willing to sell the Property for \$230,000 in 2011, he could not have sold it at that price because the real estate market was “not very good”;
- (4) utility power lines are now visible from the Property (cf. Taxpayer Exhibit No. 4) because trees had to be cut down following storms a few years ago; and
- (5) the assessment should be abated to \$210,500, based on the Taxpayer’s beliefs regarding what a cape-style home on the West Side would have sold for in 2011.

The City argued the assessment was proper because:

- (1) in part of his testimony, the Taxpayer acknowledged the market value of the Property in 2011 was “\$230,000,” within several thousand dollars of the assessment under appeal, and the appeal should be dismissed on this ground¹;
- (2) the evidence presented by the City in Municipality Exhibits A, B and C refutes the Taxpayer’s evidence (in Taxpayer Exhibit No. 1) and, in fact, cape-style home sales in the City in the relevant time frame show the assessment on the Property was proportional;
- (3) an appraisal prepared by Lee Ann Provencher, CNHA (the “Provencher Appraisal,” Municipality Exhibit D) estimates the market value of the Property was \$250,000 as of the April 1, 2011 assessment date, this appraisal is the best evidence of value and supports the proportionality of the assessment; and

¹ The board took the City’s oral motion to dismiss at the hearing under submission. The motion is denied for three reasons. First, the Taxpayer, who is not an appraiser, real estate broker or assessor, in response to the motion explained his remarks regarding what he thought the market value of the Property was in 2011. The board understands the gist of his testimony to be he would have sold the Property for “\$230,000” in 2011, but the market value of the Property was below that price because the market was “not very good” at that time. Second, the City presented evidence of its own (Municipality Exhibits A, B and C) before making the motion which the board considered in determining the proportionality of the assessment. Third, the City’s motion to dismiss is mooted by the board’s denial of this appeal on the merits.

(4) the appeal should be denied.

The parties did not dispute the level of assessment in the City was 101.5%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet his burden of proving the Property was disproportionately assessed in tax year 2011. The appeal is therefore denied for the following reasons.

As prescribed in RSA 75:1, assessments must be based on market value adjusted by the level of assessment in the municipality. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To obtain an abatement for tax year 2011, the Taxpayer had the burden of proving the Property had a market value less than \$230,700 as of the April 1, 2011 assessment date ($\$234,200 \div 1.015$). The board considered all of the evidence and arguments presented and finds the Taxpayer did not meet this burden.

As his first argument, the Taxpayer stated the poor quality of West High School (as reflected in a newspaper article) negatively impacted the market value of the Property. In the board's experience, various factors can influence prices in the residential real estate market, including the perceived quality of a school system in circumstances where a potential buyer (with children, for example) might compare properties in different municipalities or even different parts of a large city and evaluate the quality of the local schools. Here, however, the relevant sales comparisons are to other properties on the West Side of the City where children also go to West High and thus this factor, even if significant, would have an equivalent impact on the most relevant comparables to the Property.

The board evaluated the sale price and assessment data compiled in Taxpayer Exhibit No. 1 and does not agree this data is probative on the issue of whether or not the Property was disproportionally assessed in 2011. Some of the sales included in this exhibit occurred in 2013 and others occurred in 2012 (well after the April 1, 2011 assessment date) and the Taxpayer provided assessment information printed off the City's website in early March, 2014. Even if this limited data is accepted at face value, the fact some sales were at prices below assessed values (as of March, 2014) is not probative of whether the Property was overassessed in 2011. Possible discrepancies in the assessments of selected properties in a subsequent time period do not prove the overassessment of the Property. Cf. Appeal of Cannata, 129 N.H. 399, 401 (1987). In any event, the City's overall level of assessment in 2011 was 101.5% which suggests that, in that period, qualified (arm's length) sales were at prices close to their assessments, not below those assessments as implied in this Taxpayer exhibit.

The City presented evidence of its own to show the data in Taxpayer Exhibit No. 1 does not support the Taxpayer's claims of disproportionality. Municipality Exhibits B and C, for example, indicate there were other sales of cape-style homes more similar to the Property in size that sold in higher price ranges supportive of the proportionality of the assessment under appeal. The City further noted the Taxpayer purchased the Property in 2007 for \$225,000 and made extensive renovations after the purchase that likely increased its value. (See also Municipality Exhibit A.) The Taxpayer acknowledged making these improvement and that they improved the condition of the Property.

More importantly, the City, unlike the Taxpayer, presented an appraisal as evidence in this appeal. The Provencher Appraisal estimates the market value of the Property was \$250,000 in 2011 and this appraisal is the best evidence of market value. Ms. Provencher utilized four

comparable sales of cape-style homes (all on the West Side of the City) and made appropriate adjustments to those sales to arrive at her value conclusion. Her first comparable, for example, 770 Coolidge Avenue, is very close to the Property (and may be similarly affected by proximity to the power lines to the extent this factor arguably impacts market values). This property sold for \$264,900 in June, 2011, very near the April 1 assessment date; when adjusted for lot size and other differences, this sale provides a value indication of \$249,000 in the Provencher Appraisal.²

Arriving at a proportional assessment is a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). 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). Weighing all of the evidence presented and applying its judgment, the board finds the Taxpayer failed to meet his burden of proving the tax year 2011 assessment on the Property was disproportional. For all of 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 The Taxpayer did not question the methodology used by Ms. Provencher or the adjustments made in her appraisal. He did note a ‘mistake’ on page six regarding the number of rooms on the Property (“8” rather than “7”), but the board finds this error was inadvertent and non-consequential: Ms. Provencher’s sales grid on page 8 accurately states the Property has “7” rooms and this was the room count she used in her comparisons to arrive at her market value conclusion.

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: Robert Boettcher, 959 Iris Street, Manchester, NH 03102, Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: April 4, 2014

Anne M. Stelmach, Clerk