

Barbara Ahlgren

v.

City of Manchester

Docket No.: 26316-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2011 abated assessment of \$339,000 (land \$113,900; improvements \$225,100) on Map 0280/Lot 0054, 338 Walnut Hill Avenue, a single-family home on 0.82 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, represented by her husband, Greg Ahlgren, argued the assessment was excessive because:

(1) an appraisal prepared by Deborah A. Tremblay of Tremblay Appraisal Services (the “Tremblay Appraisal,” Taxpayer Exhibit No. 1) estimates the Property had a market value of

\$285,000 as of August 1, 2011 and is the best evidence of market value for tax year 2011;

(2) the City's appraisal is less credible because it relies on disputed adjustments for location and lot size;

(3) if these two adjustments are set aside, the City's appraisal reaches a similar value conclusion as the Tremblay Appraisal; and

(4) the assessment should be abated to \$285,000.

The City, represented by Robert Gagne and Michael Hurley (members of the Board of Assessors) argued the assessment, as abated, was proper because:

(1) the City inspected the Property and abated the assessment at the local level from \$369,300 to \$339,000 in tax year 2011;

(2) the Tremblay Appraisal is not credible for a number of reasons, including the fact it did not use cape-style homes as comparables and did not make reasonable adjustments for location, size and other factors;

(3) an appraisal by Lee Ann Provencher (the "Provencher Appraisal," Municipality Exhibit A) estimates the market value of the Property was \$342,000 as of the April 1, 2011 assessment date and this appraisal is the best evidence of value; and

(4) the appeal for further abatement should be denied.

The parties did not dispute that the level of assessment in the City was 101.5% in tax year 2011, 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 her burden of proving disproportionality in tax year 2011. The appeal is therefore denied.

The parties recognize that proportionality rests on credible evidence of market value adjusted by the level of assessment in the municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The evidence presented consists primarily of the Tremblay and Provencher Appraisals, which differ in their market value estimates by \$57,000, a difference less than 17% of the abated assessment under appeal (\$339,000). Consequently, resolution of this appeal rests largely on the weight that should be given to these appraisals, recognizing the Taxpayer's burden of proving disproportionality. Both appraisers relied on the sales comparison approach, but chose different sales and applied different adjustments to them to arrive at their respective market value estimates.

The board does not agree with the Tremblay Appraisal in several material respects. First, Ms. Tremblay made no adjustment for the location of the Property and the evidence presented supports a conclusion that a positive adjustment is warranted for its specific locational attributes, including close its proximity to a prestigious subdivision (Whitford Hill), as well as the added privacy and very low traffic volume due to its location on Walnut Hill Avenue, which is not a "through street." The Whitford Hill subdivision, located "across the street" from the Property, consists of 23 single-family home lots bound with restrictive covenants and has homes selling for "around \$500,000 or more." (Provencher Appraisal, p. 6.)

Ms. Provencher performed a value comparison of "Recent North End Land Sales" which led her to conclude an upward adjustment of \$30,000 to her comparable sales was warranted. (Id., pp. 30 and 8.) The board finds this location adjustment is reasonable and well supported.¹

Another shortcoming of the Tremblay Appraisal is that it relies on the January, 2011 "short sale" of 37 Apple Hill Court for \$275,000, but does not include a subsequent sale in June,

¹ The board is not persuaded by the 'paired sales analysis' in Taxpayer Exhibit No. 2. These disparate home sales do not rebut the City's evidence of unimproved lot sales in the Provencher Appraisal.

2011 for \$345,000. (See Municipality Exhibit D.) The June, 2011 sale occurred well before Ms. Tremblay's appraisal was completed on October 28, 2011 and should have been disclosed and accounted for in her analysis, rather than being omitted entirely. Inclusion of the January, 2011 transaction without the mention of the June, 2011 sale (for a price that was \$70,000 higher) is misleading and skewed her valuation conclusion downward. The Provencher Appraisal considered this sale, along with four other sales which ranged in adjusted values from \$328,000 to \$356,900, in arriving at its \$342,000 market value conclusion for the Property.

The Tremblay Appraisal did not make any lot size adjustments even though it used comparables situated on lots that were significantly smaller: the Property is 0.82 acres in size compared to other lots chosen by Ms. Tremblay which ranged in size from 0.29 acres to 0.68 acres.² The Taxpayer and her husband noted the City denied a request to 'subdivide' the lot in 2013 and it has ledge and topography characteristics that diminish the utility of portions of the lot to some extent. These additional facts, however do not support a conclusion that no adjustment for lot size is warranted. In the board's experience, most, if not all, buyers place a positive value on a larger single-family lot due to the increased privacy and other amenities such a lot is likely to provide.

The board finds the City's comparables were more similar to the Property than those chosen by Ms. Tremblay, resulting in a more credible market value estimate. The City, unlike Ms. Tremblay, compared the Property to other cape-style homes, while Ms. Tremblay selected two "Colonial" and one "Ranch" style in her five comparables. (Tremblay Appraisal, pp. 2-3.)

² In her appraisal (p. 1), Ms. Tremblay states her belief that lack of "[C]ity sewer" is an "offset" to the Property's "larger than typical lot size" but there is no support given for this belief. The evidence presented indicates connection to the City sewer is available to homes on Walnut Hill Avenue if the property owner elects to do so (at a cost in the range of \$5,000).

The City further noted Ms. Tremblay did not inspect the Property when she completed her appraisal in October, 2011 and did not take the photographs in the Tremblay Appraisal at that time. In response to the City's questions, Ms. Tremblay acknowledged completing a number of prior appraisals on the Property. The City introduced a 2006 appraisal as Municipality Exhibit B. In the 2006 appraisal, Ms. Tremblay reached a higher value conclusion (\$380,000), noting the Property had an unfinished "Bonus Room." She made a \$6,000 positive adjustment for this feature in the 2006 appraisal, but did not do so in her 2011 appraisal.

Considering the evidence as a whole, and taking these points into account, the board finds the market value estimate in the Tremblay Appraisal is not credible and understates the value of the Property. The board therefore gave more weight to the Provencher Appraisal, which provides a reasonable indication of the market value of the Property in 2011 and is supportive of the assessment under appeal.

For all of these reasons, the board finds the Taxpayer failed to meet her burden of proving the Property was disproportionately assessed in tax year 2011. The appeal is therefore 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

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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: Gregory Ahlgren, 529 Union Street, Manchester, NH 03104, representative for the Taxpayer; and Chairman, Board of Assessors, City of Manchester, One City Hall Plaza-West Wing, Manchester, NH 03101.

Date: 4/14/14

Anne M. Stelmach, Clerk