

Richard Menard

v.

Town of Chester

Docket No.: 26399-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” tax year 2011 abated assessment of \$314,900 (land \$101,000; building \$213,900) on Map 007/Lot 050, a single family home on 3.63 acres (the “Property”). (The Taxpayer also owns, but did not appeal, two lots with assessments of \$277,700 (Lot 12-14) and \$58,900 (Lot 12-14-002); the parties did not dispute the proportionality of the assessment on those two lots). For the reasons stated below, the appeal for further abatement on the Property 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 abated assessment was still excessive because:

(1) the house on the Property consists of only four-rooms on one level (three bedrooms and a large open area for kitchen, dining and living purposes) and has a cathedral ceiling which are design elements that negatively impact its market value;

(2) the assessment-record card (“ARC”) shows the cathedral ceiling as contributing \$5,073 to the assessed value, but this ceiling was a construction “cost-saving measure” which eliminates attic space and also leads to added heating costs, all of which diminish value;

(3) the additional space over the garage should be assessed as “finished attic space” rather than “half-story finished” space (\$24,759 on the ARC) as the Taxpayer disconnected the heating supply to the room after he purchased the Property and this should also lower the assessed value of the Property;

(4) although the Taxpayer purchased the Property in August, 2011 for \$345,000, this price does not reflect market value because the Property was listed for sale for only “two days” when he agreed to purchase it and he acted quickly (without much price negotiation) because he had been looking for about two years to find one that met his needs (including proximity to his other lots and a one level house design); and

(5) as stated in the appeal document, the assessment should be further abated to \$270,000.

The Town argued the abated assessment was proper because:

(1) at the hearing, the Taxpayer presented no market value evidence to support his claim of disproportionality and the appeal should be dismissed for this reason;

(2) even if, as the Taxpayer believes, the \$345,000 purchase price was above market value, the assessment on the Property for tax year 2011 (\$314,900) is well below that price;

- (3) the Town inspected the Property in December, 2011 and abated the assessment somewhat (from \$316,300) to reflect the physical condition of the Property as of the effective date of the assessment (April 1, 2011);
- (4) the sales grid and other information presented in Municipality Exhibit E provides further support for the proportionality of the assessment; and
- (5) the Taxpayer failed to meet his burden of proving disproportionality.

The parties did not dispute the level of assessment in the Town was 99.7% for tax year 2011, 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 abated assessment of \$314,900 on the Property for tax year 2011 was disproportional. The appeal is therefore denied for the following reasons.¹

The proportionality of an assessment in any tax year is governed by the market value of the Property 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). To prevail in this appeal, the Taxpayer had the burden of proving the market value of the Property was materially less than \$315,900, rounded (the assessed value of \$314,900 adjusted by the 99.7% level of assessment).

The Taxpayer acknowledged purchasing the Property in August, 2011 for \$345,000. The board has the discretion to evaluate and determine whether the purchase price is a credible indication of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of

¹ At the close of the Taxpayer's presentation at the hearing, the Town made an oral motion to dismiss based on the argument the Taxpayer had failed to present any evidence of market value. The board heard the Taxpayer's response and then took the motion under submission, stating it would rule on it in the Decision. Upon review of the evidence presented, the board denies the motion to dismiss because it finds the Taxpayer did present some very limited market value evidence, albeit not enough to entitle the Property to a further abatement (for the reasons explained in the body of the Decision).

Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Where the sale is an arm's-length transaction (between a willing buyer and a willing seller), the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The board finds the purchase price in August, 2011, just five months after the assessment date, is some evidence the market value of the Property exceeded its assessed value in tax year 2011. This conclusion is reasonable despite the Taxpayer's claim that he had some atypical motivations to purchase the Property at that price. While he stated his choices were limited by the availability of houses for sale that met his specific wants and needs (and that he had been looking for a suitable house for about two years), there was no evidence presented that other potential buyers would not have offered to purchase the Property if the Taxpayer had not agreed to do so (after it was on the market for only two days). Moreover, the price he paid was below the listed price, which is some evidence of an arm's-length negotiation with the seller.

In fact, there is little indication, other than the Taxpayer's own belief (perhaps based on hindsight), that the price he paid was above market value. He did not present an appraisal or any other independent evidence of market value and stated no mortgage was obtained when he purchased the Property. Even if the Town and the board were to allow for the possibility of some overpayment, however, the equalized value of the assessment (\$315,900) is more than 8% less than the purchase price (\$345,000) and therefore already provides some cushion for this possibility.

Simply challenging the values assigned by the Town's assessors for several components of the assessed value shown on the ARC, as the Taxpayer did at the hearing, is not sufficient to obtain an abatement because those elements in a "CAMA" (computer assisted mass appraisal)

system are merely a means to the end of arriving at a proportional assessment. Proportionality rests upon proof of the market value of the Property as a whole, rather than on any individual elements reflected on the ARC. See, e.g., Peterson v. Town of Deerfield, BTLA Docket No. 25616-10PT (October 25, 2012), where the board summarized the applicable law as follows:

It is well established that proportionality depends on the market value of the Property considered as a whole, rather than any one component that contributes to that value, such as the land or the building in isolation, because this is how the market determines values. In deciding whether an assessment is proportional, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). In other words, even if a Taxpayer wishes to challenge only selected attributes or components of an assessment, the Taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007) ("the board correctly found that '[a]ny property tax assessment appeal based on disproportionality requires a review of the market value of the property in its entirety . . .").

Thus, even if a taxpayer raises legitimate questions regarding specific values on an ARC, no abatement is warranted unless he or she can establish the assessment as a whole is disproportional relative to its market value.

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).

Consequently, the Taxpayer's arguments regarding individual components (such as the cathedral ceiling and lack of attic space) do not satisfy his burden of proving the disproportionality of the abated assessment as a whole. In addition, some of the physical changes testified to by the Taxpayer (which he argued lowered the value of the Property)

occurred subsequent to the August, 2011 purchase and well after the assessment date (April 1, 2011).

The board further finds the market value and other evidence presented by the Town is supportive of the proportionality of assessment. (See Municipality Exhibit E.) The Taxpayer raised a concern that the Town had undergone a revaluation in tax year 2011 and assessments on the Property and others had come down substantially from their prior levels, causing him to question their validity. The courts have held, however, that neither percentage increases nor decreases over prior assessments are, in and of themselves, probative on the issue of disproportionality. See, e.g., Bacon v. Town of Enfield, BTLA Docket No. 24850-09PT (March 12, 2012) at pp. 3-4 (“[N]ew assessments can be expected to vary between properties, both in absolute numbers and in percentages. Consequently, the board could give no weight to the [t]axpayer’s arguments . . .” regarding such evidence).

In summary, the board finds the Taxpayer failed to meet his burden of proving the abated assessment for tax year 2011 was disproportional. Consequently, the appeal for further abatement 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) 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: Richard Menard, 149 Lane Road, Chester, NH 03036, Taxpayer; Chairman, Board of Selectmen, Town of Chester, 84 Chester Street, Chester, NH 03036; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date:

Anne M. Stelmach, Clerk