

Diana Cote and Paul Cote

v.

Town of Bath

Docket No.: 26428-11PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2011 assessment of \$219,700 (land \$47,500; building \$172,200) on Map 20/Lot 80, a partially constructed single-family home on 0.89 acres (the “Property”). 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 board finds the Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) during the entire 2011 tax year, the house was incomplete and uninhabitable because the builder stopped all construction work in November, 2010;

(2) nonetheless, the Town substantially increased the assessment on the Property (with the taxes rising by about \$1,600 from 2010);

(3) a realtor and general contractor, Heather McAfee of the Bean Group estimated the market value of the Property in its unfinished state was \$134,500, based on an estimated cost to complete construction of \$165,000 (see the “McAfee Letter” in Municipality Exhibit C); and

(4) the assessment should be abated based on this evidence and the additional information and photographs contained in Taxpayer Exhibit Nos. 1 and 2.

The Town argued the assessment was proper because:

(1) the Town was not granted the opportunity to inspect the interior of the Property to determine its state of completion, even though its assessor made a request to do so (see Municipality Exhibit D);

(2) the Taxpayers conveyed the Property in August, 2012 at a stated price of \$250,000, as shown on a Purchase and Sale Agreement dated August 8, 2012 (Municipality Exhibit E);

(3) the Town reviewed six comparable sales and made appropriate adjustments (as shown in Municipal Exhibit A) before concluding the assessment was proportional;

(4) the Taxpayers did not present an appraisal or any other evidence of market value except for the McAfee Letter and the appeal should be denied.

The parties did not dispute the level of assessment in the Town was 97.5% in 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 Taxpayers met their burden of proving disproportionality and the assessment should be abated to \$126,800, rounded (based upon a market value finding of \$130,000, adjusted by the 97.5% level of assessment). The appeal is therefore granted for the following reasons.

Assessments must be based on market value. See RSA 75:1. “In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993).

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). 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).

In the board’s experience, a prospective buyer would consider what the Property’s market value would be “as if complete” and would then deduct the “cost to complete” to arrive at a reasonable indication of the Property’s “as is” market value. The board utilized this methodology and applied it to the evidence presented to arrive at a market value finding.

The Taxpayers acquired the Property in an unfinished state from Fenn Way Builders, LLC (“Fenn Way”) in August, 2010, with Fenn Way agreeing to complete the construction of the house. Fenn Way, however, ceased all building activity in November, 2010 and left the house in a substantially incomplete condition. As of the April 1, 2011 assessment date, no additional work had been performed. While the house was generally “weather tight” at that time, the interior was

completely unfinished and in a “shell” condition. Additionally, there was no electric service to the Property or to the entire street.

Sometime after November, 2010, the Taxpayers initiated various civil and criminal proceedings against Fenn Way, including breach of contract and fraud actions. In 2012, the Taxpayers agreed to settle all of those lawsuits, with a conveyance of the Property (in its unfinished state) to an affiliate of Fenn Way, for a total consideration of \$250,000. The settlement document states one of the Taxpayers (Mr. Cote) agreed to release all claims against Fenn Way and various named affiliates, to dismiss “with prejudice all pending civil actions against Fenn Way” and its affiliates in the Grafton County Superior Court and to a “[d]ismissal of all criminal actions now pending” in that court. (See Municipality Exhibit E.) Thus, the board can place no weight on the \$250,000 settlement figure as it reflects compensation for the resolution of various legal disputes between the Taxpayers and Fenn Way, including recovery of money paid to Fenn Way for work that was never performed.

The parties appear to agree the Property would have had a market value of approximately \$280,000 if the house was complete as of the April 1, 2011 assessment date. On the assessment-record card (“ARC”), the Town estimated the market value of the Property, as if complete, at approximately \$280,000. This estimate is supported by the sales analysis prepared by the Town’s contract assessor (Mr. Rick Vincent), who utilized six sales with sale prices ranging from \$194,200 to \$255,000. After adjustments were made to the comparable sales to account for differences in physical characteristics, this analysis provided a range of value indications from \$254,800 to \$288,400, which is generally supportive of the \$280,000 as complete market value. (See Municipality Exhibit A.) The McAfee Letter provides some additional support for an as complete

market value estimate for the Property of \$280,000. It indicates the Property had an “as is” market value of \$134,500 and it would cost \$165,000 to make it complete, resulting in a total of \$299,500.

The Town estimated the Property was 75% complete, adding a 25% “temporary UC-2011” depreciation adjustment to the estimated building replacement cost shown on the ARC, resulting in an adjustment of approximately \$56,500. According to Mr. Vincent, this “percent of completion” was based on a chart provided by Patriot Properties, Inc., the Town’s assessing software provider. (See Municipality Exhibit B.) This chart provides general information used by assessors to estimate the percent complete of a house under construction but, based on the evidence presented, the board finds it is not a reliable indicator of the state of completion of the house as of the April 1, 2011 assessment date.

The board finds there was substantial specific evidence presented to establish that the house was significantly less than 75% complete. The Taxpayer provided a July 8, 2011 “cost to complete” letter from C & S Dunn, Inc. (the “Dunn Estimate”) indicating completion costs of \$154,054.40. (See Taxpayer Exhibit No. 1.) Additionally, the McAfee Letter estimated completion costs of \$165,000. The board considered the details presented in these two cost estimates, which are generally consistent and supportive of each other, as well as the photographs and other evidence presented, and finds the most reasonable estimate of the cost to complete, as of the April 1, 2011 assessment date, is \$150,000.

In summary, the board finds the market value of the Property, “as complete,” was \$280,000 as of the assessment date. Deducting estimated completion costs of \$150,000 from this “as complete” market value, the board finds the “as is” market value of the Property was \$130,000. This finding is further supported by the McAfee Letter, which mentions a home in a similar state of completion in a different municipality listed for sale at \$119,000; Ms. McAfee noted, however,

that the Property was larger and had a higher quality of construction than this comparable. (See Municipality Exhibit C.)

Adjusting the \$130,000 market value finding by the 97.5% level of assessment, the board finds the tax year 2011 assessment should be abated to \$126,800. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$126,800 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: Diana Cote, P.O. Box 143, Lincoln, NH 03251 and Paul Cote, 2806 Peak Drive, McKinney, TX 75071, Taxpayers; Chairman, Board of Selectmen, Town of Bath, PO Box 88, Bath, NH 03740; and Vincent Appraisal Associates LLC, Attn: Richard Vincent, CNHA, 68 Currier Road, Hil

l, NH 03243, Contracted Assessing Firm.

Date: 4/8/14

Anne M. Stelmach, Clerk