

Mary Galatis

v.

City of Concord

Docket No.: 26518-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2011 assessment of \$705,800 (land \$125,000; building \$580,800) on Map 50/Lot 2/6, a single family home on 0.42 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) an appraisal performed by Donald D. Porter of Preferred Appraisal Services, LLC (the “Porter Appraisal” – Taxpayer Exhibit No. 2) estimated the market value of the Property to be \$564,000 as of March 7, 2011;

- (2) the house is located in the west end of Concord and no homes in the neighborhood sold for more than \$600,000 in recent years; further, it is at the corner of Center and Liberty Streets where there is a new roundabout as shown in the aerial photograph (see Taxpayer Exhibit No. 4);
- (3) the house is large and has a one zone, steam heating system installed in 1964 which is not efficient and does not heat the third floor adequately and therefore the third floor cannot be considered as living space;
- (4) the kitchen was redone in 1986 and the wooden cabinets are white and discolored and the corian and marble countertops are cracked and chipped;
- (5) Mary Cowan, a broker from Cowan and Zellers, testified at the hearing and confirmed the house is elegant but has antiquated systems; and
- (6) the Property will not sell for more than \$600,000.

The City argued the assessment was proper because:

- (1) an appraisal prepared by Dixie Lee Brown, Appraiser and Kathryn H. Temchack, Director of Real Estate Assessments for the City (the "City Appraisal") estimated the market value of the Property to be \$697,000 as of April 1, 2011;
- (2) Ms. Temchack testified the home, surrounded by a brick wall, is an estate type property with numerous upgrades, fireplaces throughout, bedrooms, bathrooms, custom paneling with an overall very high finish;
- (3) the Property is one of the larger homes in one of the better neighborhoods in the City;
- (4) the Porter Appraisal was prepared for financing purposes, uses an incorrect gross living area, only attributes \$10,000 to the value of the third floor and thus understates the Property's market; and
- (5) the Taxpayer has not carried her burden of proof and the appeal should be denied.

The parties did not dispute the level of assessment was 100.1%, the median ratio calculated by the department of revenue administration.

Following the hearing, the board directed its review appraiser (Cynthia L. Brown, CNHA) to conduct an inspection of the interior of the Property, in particular the area on the third floor and the kitchen and take photographs of the interior and exterior and report on her findings of the overall condition of the Property. Ms. Brown filed her Report (the "Brown Report") on July 29, 2014. Copies of the Brown Report were mailed to the parties and they were given ten (10) days to submit any written comments. The Taxpayer responded to the Brown Report on August 8, 2014 and the board considered her comments during its deliberations; the City did not respond to the Brown Report.

Board's Rulings

Based on the evidence, the board finds the market value of the Property, as of April 1, 2011, was \$625,000. The appeal is therefore granted for the following reasons.

Assessments must be based on market value. See RSA 75:1. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that she is paying more than her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). In this case, the Taxpayer needed to show the market value of the Property was less than the Property's equalized assessment of \$705,100 (\$705,800 assessment divided by the 100.1% equalization ratio).

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).

Both parties provided appraisals to estimate the market value of the Property. The Taxpayer presented the Porter Appraisal (Taxpayer Exhibit No. 2), which used three comparable properties and one comparable listing to arrive at a market value opinion of \$564,000 as of March 7, 2011. For its part, the City relied on its appraisal (Municipality Exhibit A), which used three comparable properties and arrived at a market value opinion of \$697,000 as of April 1, 2011.

The board reviewed both appraisals in detail, and found they both contain strengths and weaknesses. As a result, the board did not adopt the market value conclusion of either appraisal, but instead reviewed the market data contained within both appraisals and focused on what the board finds are the four comparable properties that provide the most credible indication of market value. These four comparable properties are: 2 Auburn Street, Concord (4,012 square feet) which sold for \$510,000 in June, 2012 (see Municipality Exhibit E); 122 School Street, Concord (3,483 square feet) which sold for \$493,000 in August, 2010; 113 Bay Street, Manchester (5,184 square feet) which sold for \$515,000 in September, 2011; and 138 Heather Street, Manchester (4,576 square feet) which sold for \$520,000 in July, 2010.

A large portion of the difference in value opinions between the parties is in how the respective appraisers treat the finished area on the third floor of the Property. The Porter Appraisal did not include the third floor area in his “Gross Living Area” (“GLA”) calculation, and instead made an “other” adjustment of \$10,000 to account for this area. The City Appraisal, however, considered the third floor area as part of the GLA. In order to provide more clarity

regarding this issue, the board reviewed the Brown Report, which concluded “the third floor is similar in quality and condition as the second floor and is considered to be living area.” The board finds, based on the evidence as a whole, including photographs presented by both parties as well as the Brown Report, inclusion of the third floor in the GLA calculation results in the most credible indication of market value.

Another difference between the Porter Appraisal and the City Appraisal is the adjustments made for differences in GLA: the Porter Appraisal made adjustments of \$20 per square foot for differences in size over 100 square feet; and the City Appraisal made adjustments of \$50 per square foot. The board finds, based on the quality and condition of the Property, which is partially offset by its overly large size, an adjustment of \$40 per square foot is more appropriate.

The board finds adjustments between the Property and comparable sales for condition, quality, size, additional features and date of sale are appropriate. Weighing all of the evidence presented and applying its judgment in making the relevant adjustments, the board finds the market value of the Property, as of April 1, 2011, was \$625,000, which results in an indicated assessment of \$625,600 when adjusted by the 2011 level of assessment (100.1%). For all of these reasons, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$625,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City 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

Michele E. LeBrun, Chair

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mary Galatis, 11 Centre Street, Concord, NH 03301, Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: 10/30/14

Anne M. Stelmach, Clerk