

Allen DuVarney

v.

Town of Merrimack

Docket No.: 26532-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2011 assessment of \$264,300 (land \$136,100; building \$128,200) on Map 4C/Lot 488, 3 Hassell Road, a single-family home on 0.995 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) he purchased the Property in an arm’s-length transaction in March, 2012 for \$222,000 after it was exposed to the open market for a period of time;

(2) an appraisal prepared by John Cowette with EDI Appraisal Services utilized the sales comparison approach to value and arrived at a market value conclusion as of January 17, 2012 of

\$225,000 (see Taxpayer Exhibit No. 1, the “Cowette Appraisal”);

(3) the Property has an older roof and garage doors, some siding needed either repair or replacement, bathrooms and kitchen are dated, and the site is impacted by a drainage easement, all of which negatively impact its market value;

(4) comparable sales submitted in Taxpayer Exhibit No. 2 indicate the sale price of the Property was reflective of its market value; and

(5) the Property’s market value, as of the April 1, 2011 date of assessment, was \$225,000 and the assessment should be reduced to \$228,150 (the \$225,000 market value adjusted by the 101.4% level of assessment).

The Town, represented by Mike Rotast, Assistant Assessor and Loren J. Martin, President, Avitar Associates of New England, Inc., contract assessor, argued the assessment was proper because:

(1) the Taxpayer purchased the Property in March, 2012 from the Federal National Mortgage Assoc. (“Fannie Mae”) for \$222,000, which was being sold after it was foreclosed upon and the sale price does not accurately represent the fair market value of the Property;

(2) the Cowette Appraisal utilized comparable sales that are inferior to the Property in terms of location, quality and condition, did not have adequate market exposure and, therefore, understates the market value of the Property;

(3) the Town prepared a “Comparable Sales Report” (Municipality Exhibit B), which utilized 10 arm’s-length sales of comparable properties and supports the proportionality of the assessed value;

(4) the comparable sales utilized by the Town occurred between September, 2010 and December, 2011, and after appropriate adjustments were made for market conditions and differences in physical characteristics, resulted in a range of market value indications for the Property between \$249,500 and \$278,550; and

(5) the Taxpayer has failed to prove the Property was disproportionately assessed and the appeal should be denied.

The parties agreed the level of assessment for 2011 was 101.4%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not meet his burden of proving disproportionality and therefore the appeal is denied.

“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). To carry his burden, the Taxpayer should have made a showing of the Property's market value. This value would then have been compared to the Property's assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). In order to carry his burden, the Taxpayer should have made a showing the market value of the Property was less than \$260,650 (\$264,300 assessed value / 101.4% level of assessment.) The board finds the Taxpayer did not do so and the appeal is therefore denied.

The Taxpayer relied upon the March, 2012 purchase price of \$222,000 and the Cowette Appraisal's \$225,000 estimate of market value as of January, 2012. (See Taxpayer Exhibit No. 1.)

While the \$222,000 sale price is some evidence of the Property's market value, it is not necessarily conclusive evidence. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

The board reviewed the Cowette Appraisal and could place no material weight on it for several reasons.

First, Mr. Cowette used comparable sales that were exposed to the market ("days on market", or "DOM") for 14 days or less with the exception of Comparable No. 5 which was marketed for 49 days. However, the appraisal states the average marketing time was three to six months, and therefore the comparability of these sales are questionable. (See Taxpayer Exhibit No. 1.) The short market exposure times of the comparable sales raises questions regarding the credibility of the market value conclusion reached in the Cowette Appraisal.

Second, Mr. Cowette was not present at the hearing to answer questions from the Town and the board regarding his selection of comparable sales and his adjustments.

Finally, the Town presented credible evidence that several of the comparable sales were sold by financial institutions after foreclosure and therefore were atypically motivated and the sale prices may not have represented market value.

The Town testified the Property was purchased from Fannie Mae after it was foreclosed on for \$258,720 and properties being marketed for sale by a lending institution after a foreclosure are frequently sold for prices that are lower than "market" as the seller is atypically motivated. The board concurs with the Town and finds the sale price of \$222,000 does not reflect the full and true market value of the Property. This finding is supported by the comparable sales submitted by

the Town which provide a more credible estimate of the Property's full and true market value as of April 1, 2011 than the Taxpayer's evidence. (See Municipality Exhibit B.) The style, size, location, quality and condition of the Town's comparable sale properties are more appropriate substitutions for the Property than the comparable sales used in the Cowette Appraisal (e.g., all of the comparable sales used in the Cowette Appraisal are smaller than the Property, while the comparables submitted by the Town bracket the Property's size), and the principal of substitution is the basis of the sales comparison approach to value.

The Town's analysis adjusted for differences between the Property and the comparable sales for differences in physical characteristics. These adjustments appear reasonable and generally well supported. (See Municipality Exhibit A.) The comparable sale properties had sale prices ranging from \$246,000 to \$326,000. After appropriate adjustments, these sales provide a range of value indications for the Property from \$249,500 to \$278,550, a difference of \$29,000, or 10% from high to low, which is a fairly tight range and is a good indication of the comparability of the sales. The 2011 assessment under appeal is \$264,300, which after adjusting for the level of assessment provides a market value indication of \$260,650 which is supported by the sale's evidence.

For all 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) 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: Allen DuVarney, 3 Hassell Road, Merrimack, NH 03054, Taxpayer; Chairman, Board of Selectmen, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: June 25, 2014

Anne M. Stelmach, Clerk