**Kristin Cassidy**

**v.**

**City of Manchester**

**Docket No.: 26596-11PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 2011 assessment of $461,000 (land $96,300; improvements $364,700) on Map 223/Lot 1C, 106 McLane Lane, a single-family home with an in-law apartment on 1.48 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 James M. Cassidy, CPA, argued the assessment was excessive because:

(1) an appraisal prepared by Melody A. Wyman of Wyman Appraisals, LLC (the "Wyman Appraisal," Taxpayer Exhibit No. 1) estimates the market value of the Property, as of May 24, 2011, was $305,000 and is the best evidence of market value;

(2) this estimate is corroborated by the 'stipulated value' of $325,000 for the Property mentioned in a bankruptcy proceeding (see Taxpayer Exhibit No. 2);

(3) the Property needs roof repairs at an estimated cost of $27,000 (see Taxpayer Exhibit No. 3) and this is not recognized in the assessment;

(4) the February, 2007 purchase price of $550,000 did not reflect what the Taxpayer's representative thought the Property was worth at that time; and

(5) the assessment should be abated to $305,000 and the appeal should be granted.

The City, represented by the board of assessors (Robert Gagne and Michael Hurley), argued the assessment was proper because:

(1) the City does not consider the Wyman Appraisal to be a credible indicator of value for many reasons, including: the sales Ms. Wyman utilized are not comparable to the Property (for reasons including location, lot size and style of house); one of the sales was a short sale; the appraisal does not mention the Property has an easement over an adjacent property for added privacy; and Ms. Wyman did not attend the hearing to testify and answer questions methodology, assumptions and value conclusions;

(2) the Property was purchased for $550,000 in February, 2007 at a price that was reflective of its market value after being exposed to the market (see Municipality Exhibit C);

(3) a number of properties located on McLane Lane sold in the past several years and all of those transactions indicate the Property is worth more than the $305,000 market value opinion arrived at in the Wyman Appraisal (see Municipality Exhibit B);

(4) the $325,000 "value" the bankruptcy court agreed to with the mortgagee, Aurora Loan Services, LLC ("Aurora") is not an indication of market value for the Property but was instead arrived at as the result of a settlement negotiation; and

(5) the appeal should be denied.

The parties did not dispute the level of assessment in the municipality for tax year 2011 was 101.5%, the median ratio calculated by the department of revenue administration.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to carry her burden of proving disproportionality. The appeal is therefore denied for the following reasons.

Arriving at a proportional assessment is not an exact science, but a process requiring use of informed judgment and experience. 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 this process, 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.

In order to obtain a tax abatement, the Taxpayer had the burden of proving the market value of the Property, as of the April 1, 2011 assessment date, was materially less than $454,200, rounded ($461,000/101.5% level of assessment). The board finds the Taxpayer did not do so.

The Taxpayer placed great reliance on the Wyman Appraisal, which arrived at a market value opinion of $305,000 (as of May 24, 2011). The board agrees with many of the City's criticisms of the Wyman Appraisal. Specifically, Ms. Wyman did not make any adjustments for style differences[1] and did not account for the Property's superior location on McLane Lane and larger lot size in comparison to the five sales and one pending listing utilized in her appraisal.

[1] In her appraisal (Taxpayer Exhibit No. 1, p. 5), Ms. Wyman assumed, without support, the Property, a 'Contemporary Tri Level,' was "Equivalent" in market appeal (and value) to the comparables she selected (a garrison, a colonial and several cape style homes) and did not make any adjustments for this factor.

(See Municipality Exhibit B.) In the board's experience, each of these factors is likely to have a positive effect on the market value of the Property.

Additionally, Ms. Wyman utilized one sale of 37 Apple Hill Court that occurred in January, 2011 for a sale price of $275,000, but it was a "short sale". As noted by the City, Ms. Wyman neglected to mention this property was immediately re-listed in February, 2011 and sold in July, 2011 for $345,000, $70,000 more than the price she relied on in her appraisal. (See Municipality Exhibits H and I.)

All other things being equal, these omissions were misleading and likely skewed the range of value indications in the Wyman Appraisal downward substantially. Also undercutting the weight that can be placed on the Wyman Appraisal is the Taxpayer's decision not to call Ms. Wyman as a witness at the hearing of this appeal. This precluded the City and the board from asking her questions regarding the methodology, assumptions and conclusions in her appraisal.

For somewhat similar reasons, the board cannot place material weight on the negotiated bankruptcy "Stipulation" of $325,000 signed by attorneys for the mortgagee, Aurora, and the Taxpayer's parents, who were debtors in that bankruptcy proceeding. (See Taxpayer Exhibit No. 2.) That Stipulation was likely influenced by the Wyman Appraisal, which the board finds is not a credible indication of market value for the reasons noted above. The Stipulation mentions two appraisals obtained by Aurora, which estimate the market value of the Property to be higher ($369,000 and $372,000) than the market value estimated in the Wyman Appraisal, but neither of these appraisals were submitted by the Taxpayer as evidence in this appeal. (Cf., Municipality Exhibit L, a copy of one of the Aurora appraisals, which states it was based on an "Exterior-Only Inspection.")

The Taxpayer presented no evidence to support a finding that the $325,000 amount mentioned in the Stipulation meets the standard test for determining whether a price is reflective of market value (i.e., a price arrived at as the result of good faith negotiations between a willing buyer and willing seller, both acting without undue influence). A careful reading of the Stipulation reflects that its intended purpose was to address the "secured" portion of Aurora's claim against the Property, not the total amount of its claim based on the $495,000 mortgage when the Property was purchased in 2007 for $550,000. (See Municipality Exhibit D.) The board finds merit in the City's arguments that the Stipulation was likely entered into by Aurora as a means of avoiding further litigation costs, delays and uncertainties in the bankruptcy court.

The board noted Mr. Cassidy's brief mention of a roof repair that may be required and his submission of one estimate (dated November 8, 2009) that this could cost $27,000 (see Taxpayer Exhibit No. 3), as well as his other arguments. However, there was no evidence presented the condition of the roof affected the market value of the Property; nor was there any indication regarding whether the repair has yet been performed.

The board also considered Mr. Cassidy's testimony regarding the $550,000 purchase price of the Property in February, 2007 and his explanation regarding why it was not reflective of market value at that time. The board finds this testimony to be less than credible given that a $495,000 mortgage (95% of the sales price) was obtained, which is some indication of market value. (See Municipality Exhibit D.)

The City, for its part, presented credible evidence that it followed a consistent assessment methodology, which is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). This evidence included assessment and sales information for multiple properties, including some in the immediate neighborhood. (See

Municipality Exhibits B, F, G and J.) The City further noted the high quality of the improvements on the Property (as shown in Municipality Exhibit C, the Property listing with photographs) and the easement the Property enjoys over an adjacent lot which insures the Property will have additional privacy. The board finds these exhibits and the remaining evidence, considered as a whole, are generally supportive of the 2011 assessed value of the Property.

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

_____
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: James M. Cassidy, 736 Pine 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: March 28, 2014

_____
Anne M. Stelmach, Clerk