Stephen C. Christian

v.

Town of Merrimack

Docket No.: 26654-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2012 abated assessment of $410,600 (land $273,900; building $136,700) on Map 6A/Lot 052, 27 Four Seasons Lane, a single family home on a one acre lot (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 board finds the Taxpayer carried this burden.

The Taxpayer argued the abated assessment was still excessive because:

(1) the best evidence of the market value of the Property are the two appraisals in Taxpayer Exhibit No. 1 which estimate the following values: $350,000 as of June 26, 2012 in the "Gustitus Appraisal"; and $357,000 as of July 9, 2012 in the "Fritschy Appraisal";

(2) these appraisals were prepared when the Taxpayer agreed to purchase the one-half interest of a co-owner (Claire Beliveau);

(3) based on these appraisals, the Taxpayer and Ms. Beliveau arrived at a negotiated value of $353,500 for the Property and the Taxpayer obtained mortgage financing in order to buy her out (for half this amount) and become the sole owner of the Property;

(4) also probative of market value is a competitive market analysis (attached to the appeal document) that estimated the market value of the Property was between $326,600 and $340,000;

(5) the Property has deferred maintenance items that will cost at least $20,000 to cure;

(6) the best comparable sale is the neighboring property, 443 South Baboosic Lake Road, which sold in August, 2013 for $281,900 (as shown in Taxpayer Exhibit No. 1); and

(7) the assessment should be abated to $353,500 adjusted by the level of assessment.

The Town argued the assessment was proper because:

(1) there are errors and inconsistencies in the Gustitus and Fritschy Appraisals and the Town does not agree with the lack of location adjustments and the modest size adjustments ($25 per square foot) to the comparables used in these appraisals;

(2) in abating the original assessment, the Town made significant adjustments on the assessment-record card ("ARC") to account for the deferred maintenance items mentioned by the Taxpayer and no further adjustments are warranted because the Property is fairly assessed 'for what it is and where it is';

(3) the Town's own sales analysis (in Municipality Exhibit A) indicates the market value of the Property was in a range supportive of the proportionality of the abated assessment; and

(4) the appeal should be denied.

The parties did not dispute the level of assessment in the Town was 103.9% in tax year 2012, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met his burden of proving disproportionality and the assessment on the Property should be abated to $389,600, rounded, based on a market value finding of $375,000 adjusted by the level of assessment (103.9%) for tax year 2012. The appeal is therefore granted for the following reasons.

The board finds the Taxpayer's two appraisals provide some evidence of the market value of the Property as of the assessment date. They were prepared by licensed real estate appraisers representing clients with divergent interests and arrived at market value estimates that are reasonably close (within $7,000, or about 2%) of each other. Also probative is the fact the parties (the Taxpayer and Ms. Beliveau) relied upon them in negotiating a buy-out price for Ms. Beliveau's one-half interest in the Property.[1]

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced. 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).

[1] While this 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 sales 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). However, where it is demonstrated that the sale was an arm's-length transaction, 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 has noted the criticisms of these appraisals by the Town but do not find them sufficiently compelling to deny the appeal. While the board finds merit in some of the issues raised by the Town, the board also finds the Town's sales analysis (in Municipality Exhibit A) also contains some inconsistencies. For example, the Town's contract assessor estimated market values declined by "2.4%/year" between 2011 and 2012, but did not make any time adjustment to one of its three comparables (310 Baboosic Lake Road) which sold in February, 2010, more than two years before the April 1, 2012 assessment date. A negative time adjustment would have resulted in a lower indication of market value.

Additionally, the Town's sales analysis made adjustments to the sales price of each comparable (to account for physical differences between the Property and the comparable property), using values developed in its own valuation model, but with little or no market based evidence to support each adjustment. Since the purpose of a sales analysis is to arrive at a reasonable estimate of market value to determine the proportionality of the assessed value, the board finds it is somewhat circular to adjust the sales price of a comparable property simply by adding or subtracting the value assessed for each feature in the Town's assessment model rather than by a market-based determination of its likely contributory value. Cf. Jerome C. Artigliere Revocable Trust v. Town of Kensington, BTLA Docket No. 25681-10PT (August 15, 2012) at p. 6.

The board also considered the sale of 443 South Baboosic Lake Road in Merrimack, New Hampshire for $281,900 in August, 2013. Although this sale occurred more than one year and a quarter after the assessment date (April 1, 2012), it is located in very close proximity to the Property and the Taxpayer described it as "the most comparable property." At the hearing, the Taxpayer stated this property had several superior features, including 110 feet of waterfront

(compared to 70 feet) and a better waterfront location (90% of land "on water" compared to "25% at best"). While not placing undue weight on this sale, the board finds it provides some evidence that market values for waterfront property in the same neighborhood were less robust than indicated by the equalized value of the Town's assessment.

Weighing all of the market evidence presented, and using its judgment and experience, the board finds the most reasonable estimate of the market value of the Property in tax year 2012 is $375,000. This estimate is bracketed by the Taxpayer's market value evidence and the equalized value of the Town's abated assessment ($395,200, as stated in Municipality Exhibit A). The appeal is therefore granted and the assessment on the Property is abated to $389,600 for tax year 2012.

If the taxes have been paid, the amount paid on the value in excess of $389,600 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, <u>not the date this decision is received</u>. 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

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Albert F. Shamash, Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Stephen C. Christian, 27 Four Seasons Lane, 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: 9/8/14

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Anne M. Stelmach, Clerk