

KBR Commercial LLC

v.

Town of Weare

Docket No.: 26693-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$236,200 (land \$60,100; building \$176,100) on Map 404/Lot 79, a single family home on 0.33 acres located at 282 Quaker Street (the “Property”). The Taxpayer and the Town were both granted leave not to attend the hearing of this appeal. For the reasons stated below, the appeal for further 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, in documents presented by Brett Nelson, a member of the LLC, argued the abated assessment was still excessive because:

- (1) the Property was purchased in December, 2011 for “about \$67,000” and sold in January, 2014 for \$145,000;
- (2) a comparable property (161 Concord Stage Road), located approximately two-miles from the Property, was listed for sale with an asking price of \$259,000, and after being on the market for several years, never sold (even though the asking price was eventually reduced to \$125,000);
and
- (3) the assessment should be further abated based on a market value of \$125,000.

The Town, in documents presented by Loren J. Martin of Avitar Associates of New England, Inc., the Town’s contract assessor, argued the abated assessment was proper because:

- (1) the Taxpayer bought the Property “at a rock bottom cash price of \$68,400” from the Veteran’s Administration after foreclosure (see July 28, 2014 Avitar letter);
- (2) the prior owners purchased the Property for \$269,000 in August, 2007 and owed approximately \$203,000 at the time of foreclosure;
- (3) the January, 2014 sale of the Property was not exposed to the open market because it was “to a tenant who had a lease to buy option”;
- (4) in response to the Taxpayer’s abatement application, the Town performed a physical inspection of the Property and made appropriate adjustments and abated the original assessed value; and
- (5) the two sales analyses submitted by the Town (attached to the July 28, 2014 Avitar letter) support the proportionality of the abated assessment, no further abatement is warranted and therefore the appeal should be denied.

The parties did not dispute the level of assessment in tax year 2012 was 107.5%, the median ratio calculated by the department of revenue administration. As noted above, neither party attended the hearing; therefore, the board's rulings are based on its own independent review of the documentation submitted.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to satisfy its burden of proving the abated assessment on the Property was disproportional in tax year 2012. The appeal is therefor denied for the following reasons.

Assessments must be based on market value. See RSA 75:1. To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that it is paying more than its proportional share of taxes. This burden can be carried by establishing the Property was assessed at a higher percentage of market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

The Taxpayer relied largely on documents showing it purchased the Property in December, 2011 for \$68,400 and subsequently resold it in January 10, 2014 for \$145,000. The board, however, has the discretion to evaluate and determine the credibility of any sales price as an indication of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

A standard definition of what constitutes market value, formulated by The Appraisal Institute in The Appraisal of Real Estate (11th ed., 1996, at p. 23), is as follows:

The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller, each acting prudently, knowledgeably and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby: (1) buyer and seller are typically motivated; (2) both parties are well informed or well advised, and each acting in what he or she considers his or her own best interest; (3) a reasonable time is allowed for exposure in the open market; (4) payment is made in terms of cash in U. S. dollars or in terms of financial arrangements comparable thereto; and (5) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

See also Society Hill, 139 N.H. at 255 (when utilizing sales data as the basis for estimating market value, a number of factors must be considered in determining whether a sale is indicative of market value, “including whether the sale was an arm's-length transaction, whether additional incentives were offered, whether unusual duress existed against either the buyer or seller, and whether some relationship existed between the buyer and seller that would influence the sale price.”)

The board finds neither of the two sales of the Property relied upon by the Taxpayer meet the definition of an arm's-length transaction and thus neither is a reliable indication of market value as of the April 1, 2012 assessment date. The first transaction (in December, 2011) resulted from a foreclosure and the second transaction (in January, 2014 -- almost two years after the assessment date) was to a tenant, was not adequately exposed to the market and there is no indication how the Taxpayer and the tenant established the sales price.¹

¹ The January 10, 2014 Settlement Statement submitted by the Taxpayer includes a “Rent Proration” adjustment, confirming the pre-existing landlord/tenant relationship between the Taxpayer and the buyer. There is no evidence the Property was advertised on the market in any way prior to this sale.

To meet its burden of proving disproportionality, the Taxpayer also referenced the sale of another property (161 Concord Stage Road) and stated in the appeal document (p. 2) it “is very comparable in size, age, and lot size. This property was listed for sale in December 2009 for \$259,000. After several price declines over the span of 3 years the owners took the property off the market with the inability to sell at \$125,000.” The Taxpayer did not provide the board with copies of the assessment-record card for this property, as required by Tax 201.33(f), which would have better enabled the board to ascertain its comparability and the accuracy of these statements.

In response, the Town provided credible information 161 Concord State Road, which did not sell, was listed as a “cash only or rehab loan sale and the home needs TLC” (indicating it was in relatively poor condition); in contrast, the Property “has been well maintained and is in good to very good condition for its age and is in no way comparable.” (See February 19, 2013 Avitar letter attached to abatement application.)

The Town also submitted actual sales of properties that were more comparable and two market analyses to support the proportionality of the abated assessment on the Property. Because of relatively few sales of older homes in the Town in the relevant timeframe, the Town presented an analysis of three sales of older homes between 2009 and 2010 and an additional analysis of two 2013 sales. Both of these analyses included only verifiable arm’s-length sales, resulting in better indications of market value. Consequently, the board finds the Town’s comparable sales and analyses are more probative than the very limited information provided by the Taxpayer.

For all these reasons, the board finds the Taxpayer did not meet its burden of proving disproportionality. The appeal is therefore 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: KBR Commercial LLC, c/o Brett Nelson, Member, 218 4th Avenue SE, Stewartville, MN 55976, Taxpayer; Chairman, Board of Selectmen, Town of Weare, 15 Flanders Memorial Road, Weare, NH 03281; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/24/14

Anne M. Stelmach, Clerk