Carol Fish

v.

Town of Gorham

Docket No.: 26722-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2012 assessment of $357,300 (land $34,600; building $322,700) on Map R4/Lot 4/B, 111 Glen Road, a single family home on two 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 argued the assessment was excessive because:

(1) as demonstrated in Taxpayer Exhibit No. 1, comparable sales and assessments indicate the Property is overassessed;

(2) the Property was purchased in June, 2010 for $394,000, but real estate values have "dropped" since that time and three "real estate evaluations" by brokers (included in Taxpayer Exhibit No. 1) estimate the value of the Property is much lower ($255,242 to $330,000);

(3) the Property is "nice" but is dated and older than some of the comparables and needs some maintenance items (also detailed in Taxpayer Exhibit No. 1); and

(4) the assessment should be abated based on a market value of $325,000.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in tax year 2012 and used the June, 2010 sale of the Property for $394,000 to establish values throughout the Town;

(2) the Property is of a better construction quality ("good") than many of the comparables relied upon by the Taxpayer, which explains its higher assessed value;

(3) the information on the assessment-record cards ("ARCs") in Municipality Exhibit A supports the Town's assertion that the Property was not disproportionally assessed;

(4) the Taxpayer has listed the Property for sale with an asking price of $379,000; and

(5) the appeal should be denied.

The parties agreed the level of assessment in the Town in tax year 2012 was 94.2% 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 failed to prove the Property was disproportionally assessed in tax year 2012. The appeal is therefore denied for the following reasons.

The proportionality of an assessment can be tested based on a reasonable estimate of market value adjusted by the level of assessment in the Town. See RSA 75:1 and, 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); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Therefore, in order to prevail in this appeal, the Taxpayer was required to establish the market value of the Property, as of April 1, 2012, was materially less than $379,300, rounded ($357,300 abated assessment divided by 94.2% level of assessment).

The Taxpayer testified in some detail about her Property and other properties and provided sales and assessment information regarding those properties in Taxpayer Exhibit No. 1. This exhibit also includes single page excerpts from separate market analyses from three real estate brokers in the area (Jennifer Stuart, Roxanne Mailhot and Brendan Battenfelder). None of them attended the hearing to testify and answer questions regarding their varying estimates of value at different times. (These ranged from an estimate of "$255,242" in "August, 2012" by Ms. Stewart to $330,000 by Mr. Battenfelder.) The board notes the Taxpayer did not provide any complete market analysis, let alone an appraisal, but only single pages showing these disparate estimates from three brokers. Further, three of the properties mentioned by the Taxpayer and shown in this exhibit are real estate listings, not sales. For all of these reasons, the board could give the information contained in this exhibit very limited weight.

More probative of the value of the Property is the $394,000 price paid by the Taxpayer in June, 2010. The Town considered this sale to be an arm's-length transaction free of duress and used this price to establish values in the 2012 revaluation. 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); and 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).

One of the Taxpayer's complaints is that the assessment on the Property increased substantially (from $284,000 in 2011) while other assessments in the Town did not increase in this manner and some of which decreased. (See Section E of the Taxpayer's abatement application.) One of the purposes of a revaluation, however, is to adjust values based on recent sales data to make assessments more proportional and to remedy past inequities. Thus, unequal percentage increases (or even decreases) among properties are inevitable following such revaluations. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. See also Appeal of Town of Sunapee, 126 N.H. 214 (1985).

The Town noted there were quality differences between the Property and the Taxpayer's comparables. The photograph on the ARC shows the Property is improved with a well-constructed, 'modern/contemporary' house with 'higher-end' design features. The house is rated "Good" in its grade, compared to other properties mentioned by the Taxpayer that are of "Average" grade, indicating to the Town they are "inferior" in construction. The house exterior has wooden clapboard siding, a "Gable/Hip" roof and other quality features. The Property has a total of 4,150 square feet of effective living area, including a partially finished basement, several finished porches and an attached three-bay garage. The Property is described as "waterfront" (on the Peabody River). The Town further noted the Property is presently on the market and is being offered for sale for $379,900.

In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). There is never one

exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Weighing the evidence as a whole, the board finds the Taxpayer did not meet the burden of proving the Property was disproportionally assessed in tax year 2012. 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

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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: Carol Fish, 111 Glen Road, Gorham, NH 03581, Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and KRT Appraisal, 191 Merrimack Street, Haverhill, MA 01830, Contracted Assessing Firm.

Date: 10/9/14

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Anne M. Stelmach, Clerk