

Ella C. Gregg Irrevocable Trust

v.

Town of Rye

Docket No.: 26741-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$1,578,500 (land \$1,413,900; building \$164,600) on Map 173/Lot 040, 1230 Ocean Boulevard, a single family home on 0.41 acres (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); and 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 met its burden of proving disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the house on the Property was built in 1907, is “winterized” and in good condition for its age;

- (2) the Property was purchased in February, 2010 for \$1.35 million in an arm's-length transaction that reflected its fair market value;
- (3) the best evidence of the market value of the Property as of the April 1, 2012 assessment date is the "Kelley Appraisal" (Taxpayer Exhibit No. 3), prepared by Anna M. Kelley, a certified residential appraiser and owner of Wentworth RE Appraisal Services, LLC, which estimates the market value of the Property was \$1.35 million, reflecting a stable market in the relevant time period;
- (4) the Town did not submit any market evidence or even an analysis of comparable assessments to defend the proportionality of the assessment on the Property; and
- (5) as stated in its Trial Memorandum (Taxpayer Exhibit No. 1), the assessment should be abated based on a market value of \$1.35 million adjusted by the level of assessment.

The Town argued the assessment was proper because:

- (1) the Town hired an outside assessing contractor ("KRT Appraisal") who performed a Town-wide revaluation in tax year 2012 using "due diligence" to establish distinct neighborhoods and to set values;
- (2) Municipality Exhibit A contains two maps showing the neighborhood where the Property is located;
- (3) the Town "stands by" its assessment because oceanfront properties did not suffer from the real estate recession like other types of properties did; and
- (4) the appeal should be denied.

The board heard the appeal of an abutting property (1232 Ocean Boulevard) for the same tax year on the same date as the hearing of this appeal. (See BTLA Docket No. 26740-12PT.) The parties agreed the board could take notice of the arguments and exhibits presented in that

appeal. The parties also agreed the level of assessment was 95.7% in tax year 2012, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer met its burden of proving disproportionality and the assessment on the Property for tax year 2012 should be abated to \$1,292,000, rounded, based on a \$1,350,000 market value finding adjusted by the 95.7% level of assessment. The appeal is therefore granted for the following reasons.

The parties recognize assessments must be based on a reasonable estimate of market value adjusted by the level of assessment. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In arriving at a judgment regarding proportionality, 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) and, 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). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., 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).

The board finds the Kelley Appraisal is the best evidence of the Property's market value as of the assessment date in this tax appeal. Ms. Kelley analyzed a total of nine comparable sales, all located in the Town, and made what the board finds were reasonable adjustments for

physical differences with the Property.¹ In her appraisal, she includes property-specific details and shows how these comparable sales and other market information led her to arrive at her value conclusion based upon her experience as an independent real estate appraiser. (See Kelley Appraisal, pp. 6-7.) The board finds her appraisal and testimony are entirely credible and reflect considerable research and a good understanding of the local market for oceanfront properties in the relevant period.

The Town did not present an appraisal or any type of market analysis of its own to rebut the Taxpayer's market value evidence. Instead, the Town simply submitted two maps (as Municipality Exhibit A in this appeal and the appeal of an adjacent property (BTLA Docket No. 26740-12PT) to show the location of the Property and other properties in the vicinity. The Town's assessor explained at the hearing he played no part in setting the tax year 2012 assessments and those values were set by an outside firm (KRT Appraisal) hired to perform a Town-wide revaluation. Since no representative of this appraisal firm testified and no documents were submitted to establish how values were set, the board could give these general statements no weight in determining the proportionality of the assessment on the Property.

In summary, the board grants the appeal because the Taxpayer met its burden of proving disproportionality and the best evidence indicates the market value of the Property in tax year 2012 was \$1,350,000. Consequently, when adjusted by the 95.7% level of assessment, the assessment should be abated to \$1,292,000, rounded.

If the taxes have been paid, the amount paid on the value in excess of \$1,292,000 for tax year 2012 shall be refunded with interest at six percent per annum from date paid to refund date.

¹ The board considered the Town assessor's criticisms of Ms. Kelley for using the February, 2010 sale of the Property as one of her nine comparable sales. However, even if Ms. Kelley had excluded that sale from her analysis, her value conclusion would still be credible.

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, 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

Albert F. Shamash, Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Christopher Snow, Property Tax Advisors, Inc., 56 Middle Street, Portsmouth, NH 03801, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, NH 03870; and KRT Appraisal, 191 Merrimack Street, Haverhill, MA 01830, Contracted Assessing Firm.

Date: 01/08/15

Anne M. Stelmach, Clerk