Alexander & Joy Tambascia

v.

Town of New Boston

Docket No.: 26763-12PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2012 abated assessment of $306,500 (land $98,600; building $207,900) on Map 12/Lot 65-1, 699 Bedford Road, a single family home on two acres (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated assessment was still excessive because:

(1) the Property was purchased on October 29, 2012 for $225,000;

(2) an appraisal performed by Donna Naroff of DND Appraisal Services (the "Naroff Appraisal" attached to the appeal document), prepared in compliance with the Veteran's Administration ("Title 10") standards for lending, estimated the market value of the Property was $237,500 as of October 10, 2012;

(3) Taxpayer Exhibit No. 1, signed by the Taxpayers' "Buyer's Agent," confirms the "property was bought for its fair market value" and shows the listing history (including the fact the Property was listed for sale at $269,900 in July, 2012 with subsequent drops in the price); and

(4) the assessment should be further abated to $280,000 because this was "fair."

The Town argued the abated assessment was proper because:

(1) the Town performed a statistical update (revaluation) in 2011 and set values at that time;

(2) during the abatement application review process, the Town abated the assessment (from $317,800);

(3) the October 29, 2012 purchase price was the result of a foreclosure and resale by "Fannie Mae" (the Federal National Mortgage Association) and was "a liquidated value at significantly below the property's fair and true market value" (see Statistical Analysis Report, Municipality Exhibit B);

(4) the Town's own market analysis using non-distressed sales (in Municipality Exhibit A) is supportive of the proportionality of the abated assessment; and

(5) no further abatement is warranted.

The parties did not dispute the level of assessment was 102.2% 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 Taxpayers failed to prove the Property was disproportionally assessed in tax year 2012 which would entitle it to a further abatement. 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 Taxpayers were required to establish the market value of the Property, as of April 1, 2012, was materially less than $300,000, rounded ($306,500 abated assessment divided by 102.2% level of assessment).

At issue is whether the purchase price paid by the Taxpayers is reflective of the market value of the Property. There is no dispute regarding the price ($225,000) they paid for the Property in October, 2012. The sale price, however, is not necessarily conclusive evidence and 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).

The Naroff Appraisal submitted by the Taxpayers estimates a somewhat higher market value ($237,500 as of October 10, 2012). This appraisal notes the Property was previously sold, in February, 2010, for $337,875 and makes no effort to explain the very substantial drop in price.

Neither the February, 2010 sale nor the October, 2012 sale was considered a "qualified" sale by the Town. In fact, the October, 2012 sale was from Fannie Mae, who obtained title to the

Property as a result of a foreclosure. The Town performed a statistical analysis to show that "sales by financial institutions after foreclosure are at liquidated values that tend to sell for 25 to 35 percent below fair market value." (Municipality Exhibit B.) The Town pointed to this study as further evidence of why it could place no reliance on the "unqualified" sale of the Property in October, 2012.

The board finds the Town thoroughly investigated the Taxpayers' claim of disproportionality. The Town reviewed the Naroff Appraisal and found it contained significant factual errors, such as understating the number of bathrooms and incorrectly stating "no updates had been performed on the Property in the past 15 years" when, in fact, the first floor was "gutted and remodeled" and a "three-quarter story [was] added in 2006." (See Municipality Exhibit A, p. 2.) The Town also questioned the comparability of the sales chosen by this appraiser, since all were substantially smaller and none had finished basements. (Id.) All other things being equal, these questionable aspects of the Naroff Appraisal reduce its credibility. The Taxpayers chose not to call Ms. Naroff as a witness to testify and answer questions regarding her appraisal.

The Town's contract assessor, a certified New Hampshire assessor, did his own appraisal of the Property, using four sales (three of which were available to the Taxpayer's appraiser but which she decided not to use) and testified regarding his methodology and conclusions. The board finds the Town's analysis and appraisal are the best evidence of its value; the value range of "$296,600 to $311,800" (id., p. 3 and Attachment 3 thereto) estimated in this appraisal is more credible than the lower value arrived at in the Naroff Appraisal and is supportive of the proportionality of the $306,500 assessment.

Finally, in arguing the assessment should be abated further (from $306,500 to $280,000), the Taxpayers seek a reduction of less than nine percent. This is a relatively small difference. 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).

For all of these reasons, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal for further abatement 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: Alexander & Joy Tambascia, 699 Bedford Road, New Boston, NH 03070, Taxpayers; Chairman, Board of Selectmen, Town of New Boston, PO Box 250, New Boston, NH 03070; and George Hildum, 2 Sanborn Road, Concord, NH 03301, Contracted Assessing Firm.

Date: 10/7/14

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Anne M. Stelmach, Clerk