

Conan Salada

v.

City of Keene

Docket No.: 26766-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” tax year 2012 abated assessment of \$129,400 (land \$63,100; building \$66,300) on Map 162/Lot 06-108, 132 Kennedy Drive, a single family home on 0.37 acres (the “Property”). For the reasons stated below, the appeal for further 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 met this burden of proving disproportionality.

The Taxpayer argued the abated assessment was still excessive because:

(1) he is a first-time buyer and purchased the Property in August, 2012 for \$88,000 after it was on the market for approximately 5½ months, advertised for sale through a real estate broker on a multiple listing service;

(2) the Property has a number of undesirable features and several items in disrepair (a carport and a porch) which were assessed by the City and had to be removed immediately after the purchase;

(3) the “Boes Appraisal” (submitted to the City and attached to the appeal document) estimates a market value of \$100,000 as of July 25, 2012;

(4) sales and assessment data for many other properties in the “Maple Acres” neighborhood (see Taxpayer Exhibit Nos. 1 and 2) support a conclusion that the Property was overassessed in tax year 2012;

(5) while the City argues otherwise, distressed sales are part of the market and should not be excluded when evaluating the proportionality of the assessment; and

(6) the assessment should be further abated based on a market value of \$70,000 (based on a deduction of the assessed values of the carport and porch removed after the purchase from the purchase price).

The City argued the assessment was proper because:

(1) an update of all property values in the City was performed in 2011 and the City abated the assessment on the Property (from \$141,100) for 2012 during the abatement application process;

(2) the Taxpayer purchased the Property in an “Estate Sale” (resulting from the death of the former owner) and the City does not place full weight on such sales as reliable indicators of market value;

(3) for his comparisons, the Taxpayer relies mainly on ‘distressed sales’ without looking at other sales in the City (a total of nine comparables) that support the proportionality of the assessment, as shown in Municipality Exhibit A;

(4) the Boes Appraisal submitted by the Taxpayer was prepared for financing purposes, contains an inaccurate estimate of the basement area, is not a credible indicator of value and deserves no weight; and

(6) the appeal should be denied.

The parties did not dispute that the level of assessment in the City was 108.2% 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 met his burden of proving the abated assessment on the Property was disproportional in tax year 2012. The appeal for further abatement is therefore granted.

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. 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). Arriving at a proportional assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions).

A proportional assessment must be based on market value adjusted by the level of assessment in the municipality. 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); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Consequently, the Taxpayer had the

burden of proving the market value of the Property as of April 1, 2012 was materially less than the equalized value of the assessment: \$119,600, rounded (\$129,400 abated assessment divided by 108.2% level of assessment).

The Taxpayer, a first-time buyer, purchased the Property in August, 2012 for \$88,000, and contends this price is probative evidence of market value in tax year 2012. The board 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”).

Of the five factors in the market value definition, only two (atypical motivation and length of time on the market) were placed in dispute by the City in this appeal. The board will briefly summarize the facts and its findings regarding these disputed issues.

On the issue of whether either party was atypically motivated, the Town did not consider the sale to be “qualified” because it was an “Estate Sale.” Because such sales usually occur soon after the death of the prior owner and occupant when property needs to be disposed of to ‘settle’ an estate, the Town argued the trustee of the estate may have been motivated to sell for a price below market value. In the board’s experience, while trustees generally have a motivation to settle an estate in a timely and efficient manner, this motivation is balanced by a legal obligation as fiduciaries to act with prudence and judgment in setting sale prices and other terms of sale to protect the interests of the heirs and creditors of the estate. At the time it was offered for sale, the Property was not vacant, but was occupied by a tenant (as shown on the listing sheet) and this likely diminished the urgency of effecting a quick sale at a price below market value. As stated in the Boes Appraisal, the Property was first listed for sale at \$119,900, a price very close to the equalized value of the abated assessment (\$119,600, as explained above). When the Property did not sell at that price, the listing was reduced to \$99,900 on April 30, 2012 and there is no evidence the trustee acted imprudently or with a lack of judgment regarding market values.

Weighing these facts and the arguments presented, the board finds there is insufficient evidence to conclude the sale of the Property in August, 2012 was the result of atypical motivations on the part of the seller or the buyer, for that matter. The board notes the Taxpayer was a first-time buyer interested in acquiring the Property, not a professional market participant trying to obtain the Property for a below market price for the purpose of promptly reselling it for a profit.

Regarding the second disputed factor, the board finds the length of time the Property was exposed to the market was reasonable. The Boes Appraisal estimates the typical marketing time for a property of this type to be “3-6 months.” The Taxpayer testified he purchased the Property within a period of 5½ months after it was offered for sale (by a real estate agent through the multiple listing service). Consequently, and in the absence of any contrary evidence, the board does not agree with the City’s argument that the Property did not receive adequate exposure to the market before it was sold to the Taxpayer.

As evidence of overassessment, the Taxpayer described several undesirable features of the Property which diminish its value, including original cabinets, fixtures and plumbing installed in 1969 and a carport and porch in such disrepair that they required removal shortly after the purchase. His appeal document also lists other problems, including insufficient attic insulation and water damage in the basement as well as cracks in the basement foundations.

The Taxpayer presented market evidence of multiple sales in the Maple Acres neighborhood where the Property was located. These sales tend to indicate properties in Maple Acres sold in the relevant timeframe for prices substantially below their assessed values. For example, 29 Laura Lane sold for \$96,250 in April, 2012, but was assessed for \$121,100. (See Taxpayer Exhibit No. 2.) The Taxpayer also described other properties in the same neighborhood that were vacant and in disrepair at that time (such as 107 Butternut, directly behind the Property, and 127 Liberty Lane, which was vacant and “falling apart” and did not sell until August, 2014).

The board reviewed all of the comparable sales submitted by the parties, including the City’s comparables from Maple Acres and other neighborhoods. A number of these sales involved financial institutions (so-called “bank sales”) raising the issue of whether such sales

should be considered as indicators of market value. The City presented five sales in Maple Acres and the Taxpayer presented 19 sales. 17 of these 24 sales in the neighborhood can be described as bank sales.

Although the board recognizes the City's general reluctance to do so, the board finds the evidence presented supports a finding that bank sales were part of the relevant market for home sales in Maple Acres in the relevant time period. Thus, it is reasonable to place some weight on those sales most comparable to the Property even if a bank or other financial institution was involved in the transaction. In particular, the board finds the most comparable sales to the Property to be: the \$96,250 Laura Lane sale in April, 2012 (a Taxpayer comparable described above); 18 Dale Drive, a City comparable which sold for \$120,000 in November, 2011; and 33 Mathews Road, a Taxpayer comparable that sold for \$86,500 in February, 2013. Making appropriate adjustments for differences in size, room count, quality and condition, the board finds these sales bracket and support a market value finding of \$100,000, rounded, for the Property as of the April 1, 2012 assessment date.

This market value finding is also supported by the Boes Appraisal, which relies on four comparable sales to estimate a \$100,000 value. Two of these sales were "REOs," meaning they can be viewed as bank sales. The two non-bank sales (32 Sesame Street and 141 Liberty Lane), when adjusted for differences with the Property, show an indicated values (\$106,400 and \$100,400) very near the \$100,000 value conclusion.

While the board does not agree with the City's arguments regarding the proportionality of the abated assessment, it also does not agree with the Taxpayer's argument for a \$70,000 value, \$18,000 below the price he paid for it. He based this conclusion on his belief the assessed value of the carport and porch should be deducted from the purchase price. The board does not agree

because, in actuality a reasonable buyer is likely to have discounted the price he or she was willing to pay for the Property due to these conditions.

In summary, the board finds the weight of the evidence supports a conclusion that the market value of the Property in tax year 2012 was \$100,000. Adjusting this market value finding by the 108.2% level of assessment results in an abated assessment of \$108,200. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$108,200 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City 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

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: Conan Salada, 132 Kennedy Drive, Keene, NH 03431, Taxpayer; and Chairman, Board of Assessors, City of Keene, 3 Washington Street, Keene, NH 03431.

Date: 10/27/14

Anne M. Stelmach, Clerk