

Jennifer and Christopher Marshall

v.

Town of Hancock

Docket No.: 26857-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 assessments of: Map R15/Lot 15A - \$557,923 (land \$55,223; building \$502,700), a single-family home on 15.10 acres (60 Shady Lane); and Map R15/Lot 12, a 2.70 acre vacant lot assessed at \$13,400 (the “Properties”). For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

(1) the Properties were purchased for \$490,000 in August, 2012 between a willing buyer and a willing seller after being exposed to the market for 1,891 days (see Taxpayer Exhibit No. 2);

- (2) an appraisal performed by W. M. Borchers of Paquette Appraisal Services (the “Borchers Appraisal,” Taxpayer Exhibit No. 4) estimated the market value of the Properties to be \$510,000 as of August 7, 2012;
- (3) an August 10, 2014 letter from Mr. Borchers to one of the Taxpayers confirmed that Mr. Borchers still considers the market value of the Properties to be \$510,000 and stated “[t]he comparables used in this report were deemed to be solid comparables bracketing many of the subject’s features...” and “[a]lso supporting a \$510000 [sic] valuation is the fact that the subject property had been on the market for 5+/- years at ever decreasing prices and thus had been fully exposed to the market” (see Taxpayer Exhibit No. 3); and
- (4) the assessment should be reduced to \$490,000 adjusted by the level of assessment.

The Town argued the assessments were proper because:

- (1) the assessed value under appeal was set during a 2011 municipal full update of values;
- (2) the \$490,000 sale price of the Properties is not a reliable indication of market value as the sellers answered a Town questionnaire indicating they were under some pressure to sell the Properties and the market value of the Properties were higher than the sale price;
- (3) some adjustments made in the Borchers Appraisal were too low, including the \$20 per square foot adjustment for gross living area and the \$600 per acre adjustment for lot size considering the home’s very good quality and condition for its age; and
- (4) the appeal should be denied.

The parties did not dispute the Town’s level of assessment for 2012 was 100.3%, the median ratio as calculated by the department of revenue administration. At the end of the hearing on the merits, the board left the record open for the Town to submit the second page of

three assessment-record cards (“ARCs”) that were admitted into evidence as Municipality Exhibit B. The Town provided the ARCs on August 21, 2014.

Board’s Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers satisfied their burden of proving the Properties were disproportionately assessed in tax year 2012 and that the assessments should be abated to \$511,500 based on a market value finding of \$510,000. The appeal is therefore granted 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 that the taxpayer’s property is assessed at a higher percentage of fair 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).

To carry this burden, the Taxpayers submitted documentation that it purchased the Properties in August, 2012 for \$490,000. The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994) (when utilizing sales as the basis for estimating market value, a number of factors must be considered in determining whether sales are 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.”); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The supreme court has held that where it is demonstrated the sale is 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).

The board finds the August, 2012 purchase of the Properties was arm’s-length in nature. The Taxpayer credibly testified there was no relationship between the buyer and the seller, there were no extraordinary incentives offered and the sale price was negotiated between two parties, each with their own motivation for buying and selling the Properties. While the Town testified that the sellers may be under some “duress” to sell as they constructed another home and may be paying two mortgages, there is no evidence before the board that would allow it to find the sellers were under “duress”, financial or otherwise.

More importantly, however, the Properties undisputed, long term exposure to the market provides much more probative evidence of the arm’s-length nature of the sale. The Properties were exposed to the market for an extended period of time: they were originally listed for sale with an asking price of \$774,900 in June, 2007; the asking price was lowered repeatedly until it was reduced to \$595,000 in November, 2010; and the Properties sold in August, 2012 for \$490,000. The Properties were marketed for sale for approximately 1,890 days (63 months) before the August, 2012 sale.¹ (See Taxpayer Exhibit No. 2.)

The Taxpayers also submitted the Borchers Appraisal, which utilized three sales and two listings to estimate the market value of the Properties was \$510,000 as of August, 2012, which is approximately 4% more than the sale price of \$490,000. Mr. Borchers confirmed his opinion of market value in an August 10, 2014 letter to the Taxpayers. (Taxpayer Exhibit No. 3.). The board finds the Borchers Appraisal to be the best evidence of market value, that his selection of

¹ According to the Borchers Appraisal, marketing times in the neighborhood were in the range of three to six months and the comparable sales were marketed and sold in less than 100 days. These are additional indications the Properties had more than adequate market exposure. (Taxpayer Exhibit No. 4, p. 1.)

comparable sale properties were appropriate and that, in general, his adjustments were reasonable and well supported.

Based on the evidence as a whole, and using its judgment and experience, the board finds the proper assessments for the Properties is \$511,500, based on a market value finding of \$510,000 adjusted by the level of assessment. For all these reasons, the appeal is granted.

The Town's assessment process allocates the value between parcels, and also between land value and building value. The board has not allocated the \$511,500 value between parcels, or between land and building values; the Town shall make these allocations in accordance with its assessing practices. RSA 76:11-a.

If the taxes have been paid, the amount paid on the value in excess of \$511,500 shall be refunded with interest at six percent per annum from date paid to refund date. 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 assessments 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

Jennifer and Christopher Marshall v. Hancock

Docket No.: 26857-12PT

Page 6 of 6

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

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jennifer and Christopher Marshall, 60 Shady Lane, Hancock, NH 03449, Taxpayers; and Chairman, Board of Selectmen, Town of Hancock, PO Box 6, Hancock, NH 03449.

Date: 11/13/14

Anne M. Stelmach, Clerk