

Peter and Anna Lessels

v.

Town of Stratham

Docket No.: 26996-12PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$940,500 (land \$181,400; building \$759,100) on Map 13/Lot 49, 3 Oak Lane, a single-family home on 4.35 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayers argued the abated assessment was still excessive because:

(1) the Property was actively and continuously marketed by experienced real estate professionals for over two years (as shown in Taxpayer Exhibit No. 1) before they purchased it for \$640,000 in November, 2012;

- (2) the \$640,000 sale price reflects the market value of the Property in tax year 2012;
- (3) although the seller had already relocated, he was not unduly 'duressed' to sell because there was no mortgage on the Property (see Taxpayer Exhibit No. 2) and he rented the Property while it was on the market;
- (4) the Property is "high end" and "unique" but has some negative features that diminish its market value (outdated bathroom and kitchen fixtures and appliances dating back to 1988, an unpopular "stucco" exterior, less desirable layout of laundry area and unsatisfactory garage size, etc.); and
- (5) the assessment should be abated based on a market value of \$640,000 adjusted by the level of assessment.

The Town argued the assessment, as abated, was proper because:

- (1) the Town inspected the Property and made adjustments that abated the initial assessment (from \$1,032,900);
- (2) the Town performed a revaluation in tax year 2009 and established values that were fair in the neighborhood and the Town (as reflected in Municipality Exhibit A);
- (3) the \$640,000 purchase price did not reflect market value because the Property was on the market for over two years, causing duress for the seller who lived outside the home (in another state) for more than one year and still had high carrying costs associated with the Property;
- (4) an appraisal obtained by the Taxpayer for financing purposes at the time of purchase estimates a value of \$825,000; and
- (5) the appeal should be denied.

The parties agreed the level of assessment for tax year 2012 was 109.8%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers met their burden of proving the abated assessment on the Property was disproportional in tax year 2012. The appeal for further abatement is therefore granted for the following reasons.

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).

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); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). Consequently, the Taxpayers 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: \$856,600, rounded (\$940,500 abated assessment divided by 109.8% level of assessment).

The Taxpayers purchased the Property for \$640,000 in November, 2012, approximately seven months after the April 1, 2012 date of assessment. Where it is demonstrated that the price

at which a property is purchased is the result of an arm's-length transaction, that price is one of the "best indicators of the property's value." See Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988), quoting from Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978). The board has the discretion to evaluate and determine the credibility of the 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 (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 one factor (atypical motivation in the form of unusual duress) was placed in dispute by the Town in this appeal. The Town argued the seller was atypically motivated to sell the Property as he vacated the home and relocated to Virginia more than a year prior to the November, 2012 sale, and the carrying costs associated

with the Property caused financial duress. The Taxpayers disagreed, arguing the seller was not “financially under the gun” to sell as the Property did not have a mortgage on it. (See Taxpayer Exhibit No. 2.) Additionally, the seller leased the Property for some of the time it was on the market and the rental income offset at least part, if not all, the carrying costs.

The listing history and the market exposure to the Property are not in dispute. The Property was listed for sale in July, 2010 for \$1,150,000. The seller changed brokers several times, each time hiring well qualified brokers experienced in selling high end properties in the seacoast area, and dropped the asking price in stages until October, 2012 when it was finally reduced to \$650,000; the Property eventually sold in November, 2012 for \$640,000, more than two years after it was first listed for sale and actively and continuously marketed.

Especially for high end properties, or properties with unique physical characteristics that impact their marketability, substantial price reductions and lengthier periods of market exposure prior to sale can reflect inaccurate pricing (based on unrealistic expectations regarding market values and conditions) rather than unusual duress (atypical motivation) on the part of the seller. “In general, a higher [listing] price will require a longer marketing period and greater efforts to find a qualified and willing buyer.” Goldstein v. Town of North Hampton, BTLA Docket No. 24345-08PT (July 13, 2011), p. 5. Such properties require longer periods of market exposure because they are “attractive only to a limited number of buyers.” (Id.)

There is insufficient evidence to conclude the sale of the Property in November, 2012 was the result of atypical motivations on the part of the seller or the buyer, for that matter. While there was evidence the seller moved out of the home some time before the sale, that in and of itself is not conclusive evidence of financial duress. In the board’s experience, there are a number of individuals who, without financial duress, are able to own and maintain more than one

residence at the same time, even though each home incurs carrying costs. Without any evidence of the seller's actual financial condition, a conclusion that unusual duress caused him to agree to a sale price below market value is overly speculative and not warranted.

While the Town presented many photographs and other documents at the hearing of this appeal, it did not present a market analysis of its own to support the proportionality of the abated assessment. The board recognizes the Town's assessments were established during a 2009 Town-wide revaluation. Such values may have been consistent and reflective of market conditions at that time and may still yield reasonable market value indications for most, but not necessarily all, properties in the Town. The Town provided detailed information and a listing of the assessments of the eight other properties on Oak Lane. (See Municipality Exhibit A.) As a test of reasonableness, the board reviewed the assessments on these properties and noted they vary widely because of size, style, quality and other differences and range from a low of \$515,900 to a high of \$1,043,100 in tax year 2012. The \$940,500 assessment under appeal is the second highest on this list and abating it for the reasons indicated in this Decision would still leave the Property in the higher end of this range (changing its ranking from second to third highest).

The board could not give a financing appraisal from an unidentified appraiser any weight as evidence. The Town submitted only two pages from this document, which is insufficient for the board to determine the credibility of the market value indication. One of the Taxpayers (Peter Lessels) stated he disagreed with the value conclusion in the financing appraisal. It was prepared for a lender, not for the Taxpayers, and enabled the Taxpayers to qualify for a loan in the amount of \$473,900 – approximately 75% of the \$640,000 sale price – not a higher amount. Arguably, the higher estimate of value in the financing appraisal ordered by the lender was not

material to the Taxpayers' decision to purchase of the Property and there is no evidence they obtained additional financing (such as a second mortgage) supported by the higher value estimated in the financing appraisal.

The Town placed emphasis on a statement on one of the listing sheets that the Property was "one of the best buys in New Hampshire." This statement, however, is more likely overzealous salesmanship by a real estate broker interested in obtaining a sales commission rather than being a statement of fact on which to defend an assessment. In this regard, the evidence presented during the hearing included a written communication from the first listing broker to the Town explaining why the Property sold for \$640,000 rather than the much higher prices it was listed for much of the time period it was exposed to the market. This detailed explanation was given to the Town's assessors in a January 31, 2014 e-mail from Lauren Stone to Jim Joseph, an assessing assistant employed by the Town who specifically requested it from her. (See Municipality Exhibit A.) In this document, Ms. Stone states one client (the "buyer" of another property) told her "the house was worth about what it sold for"; she explained the "substantial challenge[s]" of selling the Property at a higher price included: "a very outdated floor plan" and a "dysfunctional layout" (bedroom sizes and separate staircases) and the high taxes and "other operating costs" associated with it.

The parties agreed the residence was "custom" and its quality of construction was very good. However, the Property has some features that arguably do not contribute to (and may detract from) its market value. The board was persuaded by the Taxpayers' arguments and testimony regarding some unique features of the Property which likely limit its marketability, including stucco siding, an indoor pool, multiple staircases, and dated décor, fixtures and appliances. This evidence is corroborated by the e-mail from Lauren Stone quoted above.

After considering and weighing all of the evidence presented, the board finds the \$640,000 sale of the Property is the best evidence of market value in tax year 2012. Adjusting this value by the level of assessment results in an abated assessment of \$702,700 (rounded).

If the taxes have been paid, the amount paid on the value in excess of \$702,700 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 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: Peter and Anna Lessels, 3 Oak Lane, Stratham, NH 03885, Taxpayers; Chairman, Board of Selectmen, Town of Stratham, 10 Bunker Hill Avenue, Stratham, NH 03885.

Date: November 21, 2014

Anne M. Stelmach, Clerk