Terrell G. and Brendan A. Klema

v.

Town of Charlestown

Docket No.: 27054-12PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2012 abated assessment of $238,800 (land $28,600; building $210,200) on Map 119/Lot 059, 296 Main Street, a single family home on 1.6 acres (the "Property"). For the reasons stated below, the appeal for further 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 (represented at the hearing by Brendan Klema) argued the abated assessment was still excessive because:

(1) they purchased the Property in June, 1999 for $90,000;

(2) the house is very old (circa 1761) and is only in "fair condition";

(3) houses in the "Main Street" neighborhood (described in Taxpayer Exhibit No. 1) are in a historic district but show declining market values and are now less desirable than "country" homes of similar quality in the Town;

(4) as a result of a Town-wide revaluation, the assessment on the Property increased in 2011 (from $191,000 in 2010 to $220,000) and again in 2012 (to the abated value shown above) in a period of economic downturn and recession;

(5) an appraisal completed by Frank Bahniuk of Hillside Appraisals, LLC (the "Bahniuk Appraisal," Taxpayer Exhibit No. 2) estimates the Property had a market value of $220,000 as of August 13, 2010 but the market evidence in Taxpayer Exhibit No. 1 supports a conclusion that market values were in decline; and

(6) the assessment should be further abated based on a value range of "$190,000 - $195,000" to account for a declining real estate market.

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

(1) the Town updated all assessments in tax year 2011 using "Vision Appraisal" to develop values;

(2) the Taxpayers' 2010 appraisal (the Bahniuk Appraisal) estimates a market value ($220,000) that is supportive of the proportionality of the assessment;

(3) the Bahniuk Appraisal was prepared for financing purposes (and therefore may be overly conservative in its estimate of value) and does not mention or add the contributory value of an in-ground pool on the Property;

(4) the Main Street neighborhood where the Property is located is "historic" and in fact this area of the Town is on a national register of historic places;

(5) the Town's own sales adjustment grid (in Municipality Exhibit A) includes one of the same comparables (276 Main Street) as the Bahniuk Appraisal, as well as more recent sales, and is supportive of the abated assessment ($238,800); and

(6) the appeal should be denied.

The parties did not dispute the level of assessment was 100.8 percent, 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 Property was disproportionally assessed in tax year 2012 and finds the assessment should be abated to $210,000, rounded. The appeal is therefore granted for the following reasons.

In order to be proportional, an assessment must be reflective of market value. See RSA 75:1 and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). There is however, no one exact, precise or perfect assessment reflecting market value; rather, there is a range of values that may represent, within a tolerable margin of error, a proportional assessment. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The Taxpayers argue the assessment for tax year 2012 should be further abated to a value in the range of $190,000 to $195,000 in order to achieve proportionality. A $195,000 market value estimate is approximately 18% below the abated assessment under appeal ($238,800).

The board considered the Bahniuk Appraisal, which estimated a market value of $220,000 as of August 13, 2010 and the Town's criticisms of it. Notwithstanding these criticisms, the Town's sales grid uses one of the same comparables (276 Main Street) as in the Bahniuk Appraisal. 276 Main Street sold for $299,000 on April 30, 2010 and the Town makes a

negative 10% time adjustment to this sale reflecting its belief that values declined somewhat since 2010.[1]

The board finds the Bahniuk Appraisal is deserving of some weight as an indication of the value of the Property in 2010. Since there is no substantial dispute regarding the need for a negative time adjustment, the board finds it is reasonably to time adjust the Bahniuk Appraisal estimate of value by $25,000 (because its estimate is as of August 13, 2010) to $195,000. Recognizing some of the other objections to the Bahniuk Appraisal noted by the Town that were mentioned above, and using its judgment and experience, the board finds the market value of the Property as of the April 1, 2012 assessment date was approximately $210,000.

The board is unable to give much weight to the Taxpayers' additional argument that the assessment on the Property increased after 2010. This argument does not properly take into account that the purpose of a revaluation (the update performed by the Town in tax year 2011) is to revise values in order to correct for inequities that may have arisen over time. Municipalities are required by law to update values at least once every five years and can do so more frequently should they decide to do so. See RSA 75:8 and RSA 75:1. As stated in Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986), a fair and proportionate tax can only be achieved through a constant process of correction and adjustment of assessments. In yearly arriving at an assessment, a municipality must look at all relevant factors affective market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). Simply because the assessment on the Property increased after 2010 is not, in and of itself, probative of disproportionality in tax year 2012.

[1] The Town used three other properties in this sales grid, one of which (223 North Hemlock Road) sold for $175,000 in July, 2012 and resold for $183,000 in June, 2014 (27 months after the April 1, 2012 assessment date at issue in this appeal). Another sale in the Town's sales grid (14 West Road) was not listed in the "MLS" directory and the price stated ($196,800) may not be reflective of market value. For these reasons, the board finds these two sales are deserving of less weight in arriving at a reasonable estimate of market value for the Property as of April 1, 2012.

In summary, the board finds the Taxpayers met their burden of proving disproportionality and the assessment for tax year 2012 on the Property should be abated to $210,000.

If the taxes have been paid, the amount paid on the value in excess of $210,000 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, <u>not the date this decision is received</u>. 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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Michele E. LeBrun, Chair

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Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Terrell G. and Brendan A. Klema, PO Box 77, Charlestown, NH 03603, Taxpayers; Chairman, Board of Selectmen, Town of Charlestown, 26 Railroad Square - PO Box 385, Charlestown, NH 03603; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 9/5/14

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Anne M. Stelmach, Clerk