

Jade A. McRae

v.

Town of Effingham

Docket No.: 27153-13PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 abated assessment of \$184,500 (land \$47,100; improvements \$137,400) on Map 203/Lot 15, 623 Province Lake Road, a single-family home on 3.1 acres (the “Property”). For the reasons stated below, the appeal for further abatement is denied.

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 failed to prove disproportionality.

The Taxpayer argued the abated assessment was still excessive because:

- (1) an appraisal prepared by Stephan Loeffler (the “Loeffler Appraisal,” Taxpayer Exhibit No. 3) estimated the market value of the Property was \$124,000 as of March 25, 2013;
- (2) the Town did not properly take into account the actual condition of the Property (reflected, in part, by the photographs in Taxpayer Exhibit No. 1), some electrical issues (outlets that do not work), the fact the attic is unfinished and also misstated the actual age of the house (as 1860 rather than 1840);
- (3) even if the Loeffler Appraisal reaches a value conclusion that is too low, the market value of the Property was no more than \$140,000; and
- (4) a further abatement should be granted based on a \$140,000 market value and the appeal should be granted.

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

- (1) after denying the original abatement application, the Town inspected the Property and then abated the assessment (from \$208,100 to \$184,500) to take into account the condition and other issues identified by the Taxpayer;
- (2) the Loeffler Appraisal relied upon by the Taxpayer does not present a credible opinion of value because it was prepared for financing purposes and because one of the three sales it relies upon was a “forced sale” (1140 Province Lake Road) and another was a “bank resale” (7 Cushing Corner Road) from another municipality (the Town of Freedom);
- (3) while the third sale (4 Plantation Road) in the Loeffler Appraisal appears to be a valid comparable, the lot is very narrow (as shown on the map in Municipality Exhibit B) making it inferior to the Property, and, in his sales grid, Mr. Loeffler applied a smaller building size (2,208

square feet rather than 2,368 square feet for the Property) and made other adjustments that are questionable [such as \$20 per square foot for building size differences];

(4) the Town's comparable sales analysis (Municipality Exhibit A) indicates a "value range" of "\$169,283 to \$204,300" which supports the proportionality of the abated assessment; and

(5) the appeal should be denied.

The parties agreed the level of assessment in the Town for tax year 2013 was 109.9%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to prove the assessment on the Property for tax year 2013, as abated by the Town, was disproportional. The appeal for further abatement is therefore denied for the following reasons.

As prescribed in RSA 75:1, the proportionality of an assessment is based on a reasonable estimate of market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).; see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The abated assessment of \$184,500, adjusted by the agreed-upon level of assessment in the Town in tax year 2013 (109.9%), results in a market value indication of \$167,900, rounded. In order to obtain a further abatement, the Taxpayer was obligated to satisfy the burden of proving the Property had a market value materially less than this indicated value.

To determine whether the Taxpayer met her burden of proof, the board considered and weighed all of the evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in

Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, “judgment is the touchstone” in evaluating the credibility and probative value of any appraisal or other market value evidence presented. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975) ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

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 proportionality and the resulting tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The Taxpayer conceded at the hearing that the market value estimate in the Loeffler Appraisal (\$124,000) is too low and did not contradict the Town’s arguments (noted above) that one of the three sales in that appraisal was a “forced sale” and another was a ‘bank resale,’ factors which lessen their validity as sale comparables. When questioned by the board, the Taxpayer estimated a higher market value (\$140,000), but did not produce any tangible evidence, such as a market analysis of a real estate broker or another appraisal, to support that estimate.

The Town’s assessor did not dispute the comparability of the third sale in the Loeffler Appraisal: 4 Plantation Road, which sold for \$137,000 in September, 2012. He did not agree, however, with the adjustments to this sale in the Loeffler Appraisal (which yielded an adjusted value of “\$136,600”), primarily because this comparable is on a very narrow lot (as shown in Municipality Exhibit B), making it less usable than the Property and therefore inferior to it rather

than “superior” to it, and also because this appraisal improperly adjusts for building size differences.

The Town, for its part, presented a “comparable sales analysis” (Municipality Exhibit A) relying on three sales that occurred after the assessment date (April 1, 2013). According to the Town’s assessor, these sales, after adjusting for building size, age and other differences, indicate a range of value (“\$169,283 to \$204,300”) that is supportive of the abated assessment on the Property. The Town adjusted these sales for: building size using “\$50” per square foot in its calculations (rather than the \$20 per square foot used in the Loeffler Appraisal); and age, using “1860” as the ‘year built’ for the Property and adjusting each comparable for relative age by “\$500/year.” (In comparison, the Loeffler Appraisal made no adjustment for relative age.)

As a test of reasonableness, if the board applied a lower (\$30 per square foot) adjustment for building size and accepted the Taxpayer’s assertion regarding the age of the house (applying an 1840 rather than 1860 year built) to the Town’s analysis, the resulting range of values (\$138,263 to \$177,193), while somewhat lower, would still be supportive of the indicated value of the abated assessment (\$167,900).

The board considered all of the Taxpayer’s other arguments for a further abatement, including deferred maintenance issues on the house (not supported by any specific repair estimates) and the limited attic space.¹ The board finds, however, that the Town made reasonable adjustments after inspecting the Property and granting an abatement to account for all of the factors mentioned by the Taxpayer that are likely to impact market value.

For all of these reasons, the appeal for further abatement is denied.

¹ The Town assessed the attic space based upon an effective area of only 43 square feet and the board therefore finds the resulting assessed value for this space is not unreasonable.

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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jade A. McRae, 623 Province Lake Road, Effingham, NH 03882, Taxpayer; Chairman, Board of Selectmen, Town of Effingham, 68 School Street, Effingham, NH 03882-8104; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 7/29/15

Anne M. Stelmach, Clerk