

Kenneth T. O'Connor Revocable Trust

v.

Town of Milford

Docket No.: 27171-13PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 abated assessment of \$250,800 (land \$69,100; building \$181,700) on Map 56/Lot 20, 74 Foster Road, a single-family home on 1.43 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 Donna K. Naroff of DND Appraisal Services (the "Naroff Appraisal," Taxpayer Exhibit No. 2) estimates the market value of the Property was \$240,000 as of the April 1, 2013 assessment date;
- (2) when adjusted by the level of assessment, the estimate of value in the Naroff Appraisal results in an assessed value indication of \$245,040 (\$5,760 less than the Town's abated assessment) that will reduce the tax burden on the Property; and
- (3) the appeal should be granted.

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

- (1) in response to the Taxpayer's abatement application, the Town's assessor viewed the Property and made several changes and adjustments, including changing the condition (from "Good" to "Average"), resulting in an abatement (from \$259,100 to \$250,800, as shown in Municipality Exhibit D);
- (2) even if the market value estimate (\$240,000) in the Naroff Appraisal is accepted at face value, the resulting difference between the indicated assessment after application of the level of assessment (\$245,040) and the Town's abated assessment (\$250,800) is too small (\$5,760 or approximately two percent) to warrant a further abatement and this appeal should be dismissed¹;
- (3) the Town does not agree with several "subjective" adjustments in the Naroff Appraisal and its own "Sales Comparison Grid" in Municipality Exhibit A (hereinafter, the "Town Analysis"); using the same three comparables as the Naroff Appraisal but making more reasonable adjustments to each sale for quality, condition and other differences, the Town estimates the

¹ At the hearing, after the Taxpayer's presentation, the Town made an oral motion to dismiss the appeal, which the board denied. In most instances, determination of the proportionality of an assessment requires consideration of the evidence presented as a whole and not simply a rigid application of a percentage test of materiality.

Property had a market value of \$245,000 as of the assessment date, which is supportive of the abated assessment;

(4) the assessment-record cards and photographs of the comparables (Municipality Exhibit C), as well as the cost model information (Municipality Exhibit B), demonstrate the adjustments made in the Town Analysis are more reasonable than those made in the Naroff Appraisal and reflect a consistent methodology; and

(5) the appeal should be denied.

The parties agreed the level of assessment in the Town was 102.1% in tax year 2013, 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 establish the Property was disproportionally assessed in tax year 2013. The appeal is therefore denied for the following reasons.

As the parties recognize, a proportional assessment in each tax year must be based on a reasonable estimate of market value adjusted by the level of assessment in the municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportional assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

The parties disagree by a relatively small amount (\$5,000) on what is the most reasonable estimate of the market value of the Property in tax year 2013. The Taxpayer relies on the Naroff Appraisal, which estimates a market value of \$240,000, and the Town relies on the Town Analysis, which estimates a market value of \$245,000.

In making market value findings, the board applies its “experience, technical competence and specialized knowledge” to the evidence presented. See RSA 71-B:1; and 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 has the ability, recognized in the statutes, to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it”). Further, in making findings where there is conflicting evidence, “judgment is the touchstone.” See Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras, 115 N.H. at 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). Further, “[w]hen faced with conflicting [expert] testimony, a trier of fact is free to accept or reject an expert’s testimony in whole or in part [citation omitted.] . . . [and can] credit the opinion of one expert over the opinions of other experts.” LLK Trust v. Town of Wolfeboro, 159 N.H. 734, 740 (2010).

Using its judgment and experience, the board finds the adjustments to the three common sales and value conclusion in the Town Analysis are better supported than those in the Naroff Appraisal and the most reasonable estimate of the market value of the Property, based on the evidence presented, is \$245,000, as shown in the Town Analysis. The Town’s assessor (Marti Noel) who prepared the Town Analysis attended the hearing to testify and to respond to questions on cross-examination and from the board. The preparer of the Naroff Appraisal, on the other hand, did not attend the hearing and therefore was not available to answer questions or provide further support for her own adjustments to each sale comparable.

The board finds the Town Analysis and testimony of the Town’s assessor to be credible and well supported, especially her adjustments for quality and condition (which differ to a

material degree from those made in the Naroff Appraisal). For example, Ms. Noel concluded the Property had a higher quality of construction (“Average +10”) than the three comparable sales (“Average”) and the photographs and assessment-record cards submitted by the Town support this conclusion. Ms. Naroff, in comparison, based her differing quality adjustments on relatively minor points (kitchen countertop differences) rather than on a complete evaluation of structural and other differences that distinguish the Property and impact value. (See Naroff Appraisal, p. 11.)

When the 102.1% level of assessment for tax year 2013 is applied, a market value finding of \$245,000 is supportive of the proportionality of the abated assessment of \$250,800 ($\$245,000 \times 1.021 = \$250,100$ rounded). The Town also presented credible evidence indicating the Property was assessed consistently with other properties. A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Even if, for the sake of argument, the slightly lower market value conclusion in the Naroff Appraisal were accepted at face value, the board finds the Taxpayer would still not be entitled to an abatement on the Property in tax year 2013. This finding is based on the fact that the indicated assessment based on a \$240,000 market value finding adjusted by the level of assessment (\$245,040) is within approximately two percent of the abated assessment (\$250,800).

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).

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

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: Kenneth T. O'Connor Revocable Trust, Kenneth T. O'Connor, Trustee, 74 Foster Road, Milford, NH 03055, Taxpayer; and Chairman, Board of Selectmen, Town of Milford, 1 Union Square, Milford, NH 03055.

Date: 7/29/15

Anne M. Stelmach, Clerk