

Stratford 1910 Trust

v.

Town of Bow

Docket No.: 27481-13PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$286,200 on Map 28/3/43-B/U14A, 5 Stone Sled Lane, a “duplex” style condominium (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 met its burden of proving disproportionality.

The Taxpayer, represented by Mr. Wm John Hare, a trustee and beneficiary, argued the assessment was excessive because:

(1) the Property, constructed in 2008, is in an ‘over 55’ condominium development and was owned by a financial institution (who acquired it through a foreclosure) for some time until it was purchased in February, 2013 for \$200,000;

- (2) this price was negotiated between the Taxpayer's attorney and the financial institution based on several appraisals, including the "Beasley Appraisal" (Taxpayer Exhibit No. 3) which estimates the Property had a market value of \$200,000 as of January 9, 2013;
- (3) the Property is a "duplex" style condominium, attached to one other unit in the development, which makes it less desirable than other "detached" units in the Stone Sled development; and
- (4) the assessment should be abated based on a market value of \$200,000.

The Town argued the assessment was proper because:

- (1) the 2013 transaction for \$200,000 is "unqualified" and unreliable as an indication of market value because it was a "foreclosure" sale;
- (2) the Town does not accept the value conclusion in the Beasley Appraisal because it relies on two sales from inferior units in another over 55 condominium development ("White Rock") and makes an excessive (negative 10%) adjustment for duplex (attached) units;
- (3) while some adjustment may be appropriate for duplex units when compared to detached units, there were no sales of duplex units in the Town during the relevant timeframe that would support the negative 10% adjustment applied in the Beasley Appraisal;
- (4) a market analysis performed by the Town's contract assessor indicates the market value of the Property as of the assessment date was \$276,500, which equates to an indicated assessment of \$270,200, and is within 5.6% of the assessment under appeal, well within the "acceptable range" for a mass appraisal; and
- (5) the appeal should be denied.

The parties agreed the level of assessment was 98.3%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds a proportional assessment on the Property for tax year 2013 was \$245,700, based on a market value finding of \$250,000 adjusted by the 98.3% level of assessment. The appeal is therefore granted 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). All relevant factors affecting market value must be considered in determining the proportionality of an assessment. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board (on September 25, 2015) took a view of the exterior of the Property, as well as comparable sale properties in both Stone Sled Farm and The Cottages at White Rock.

Arriving at a proper 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) (use of judgment in selecting valuation methodology and assumptions). 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).

The board took note of the fact the Property is in an over 55 condominium development. The Taxpayer's representative testified he and his wife purchased the Property when it was first offered for sale in January, 2007. The parties appear to agree the purchase price at that time

(\$440,000) is not probative of market value as of the April 1, 2013 appeal date in light of the financial downturn in the real estate market and the specific problems encountered by the developer when he attempted to sell other Stone Sled Farm units.

The board heard testimony the Property went through a foreclosure in October, 2011. During this process, Mr. and Mrs. Hare, the Taxpayer's trustees and beneficiaries, continued to live on the Property. Somewhat later, in January, 2013, the Taxpayer purchased the Property from the financial institution for \$200,000, and this allowed Mr. and Mrs. Hare to continue to live on the Property.

As noted above, the Town treated the January, 2013 transaction as an "unqualified" sale because the seller was a financial institution, the Property had been foreclosed and the Town had some questions regarding why that institution allowed the Taxpayer's beneficiaries (Mr. and Mrs. Hare) to continue to live on the Property during the foreclosure process without paying "rent" or making mortgage payments. The board is not persuaded by these arguments because it is not clear from the testimony presented whether a reasonably prudent seller (the financial institution) would lower or raise the price demanded because of these special circumstances.

The board has the discretion to evaluate and determine whether a sale transaction is indicative of market value. See, e.g., 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). In certain circumstances, the sale price can be one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

Evaluating the evidence as a whole, the board finds no weight can be given to the \$200,000 sale price because it is significantly lower than any other recorded sales price in the

Stone Sled Farm development. (See Municipality Exhibit C.) Consequently, the board finds it is not a good indication of market value.

In brief, the board considered all of the market evidence presented to arrive at its own market value finding (\$250,000 rounded). This evidence included the sales in the Beasley Appraisal, the sales used in the Town's market analysis and all of the testimony presented regarding the impact of various factors affecting the Property's market value such as general economic conditions, unit size, age, condition and whether the units were "attached" duplex units like the Property or "detached."

The board finds it can place no weight on the market value conclusion reached in the Beasley Appraisal for several reasons. First, it utilized two sales from another residential condominium in the Town: The Cottages at White Rock. (See Taxpayer Exhibit No. 3, p. 3.) The White Rock units differ from the Property in that they are multi-story townhouses, while the Property is a single story. In the board's experience, single-story units are the preferred style in the relevant over 55 market. Therefore, the board finds the market would consider the White Rock units inferior and therefore they should have been adjusted upward in the Beasley Appraisal. Instead, Mr. Beasley adjusted them downward \$10,000 for a "Floor" factor. Secondly, Mr. Beasley did not make any adjustment for location. The board finds an adjustment for this factor is appropriate as the marketability of the White Rock units are negatively influenced by two large, multi-story apartment buildings in that location, as well as the density of development.

The Town relied upon a "Direct Sales Comparison Analysis" to support the proportionality of the assessment, and used four comparable sale properties within the Stone Sled Farm condominium to estimate the market value of the Property. (See Municipality Exhibit D.)

After making adjustments for various factors (size, porches, decks, finished basement area, etc.), the Town concluded the Property had a market value of \$275,200, which equates to an “Indicated Proper Assessment” of \$270,500. The board does not agree with this value conclusion.

While the Town’s adjustments in its sales analysis are generally reasonable, the board finds the Town should have adjusted for differences in the age of the Property (7 years) and the comparable sales (either new or only one year old). Additionally, the Property is an attached, duplex-style unit and all of the comparable sale properties are detached units. Using the board’s judgment and experience, the board finds a downward adjustment of (approximately) \$25,000 is reasonable to account for those differences.

Starting with the Town’s estimated of \$275,200 and deducting an additional \$25,000 as discussed above, the board finds the Property, as of April 1, 2013, had a market value of \$250,000, rounded.¹ After applying the Town’s level of assessment, the board finds the proper assessment is \$245,700 for tax year 2013 and the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$245,700 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

¹ As a further test of reasonableness, the board reviewed the sales of four duplex style units that occurred within Stone Sled Farm. These units sold between April, 2014 and November, 2014 for sale prices that ranged from \$235,000 to \$252,466, which bracket the board’s market value finding.

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: William John and Priscilla Hare, 5 Stone Sled Lane, Bow, NH 03304, Trustees for Stratford 1910 Trust, Taxpayer; Chairman, Board of Selectmen, Town of Bow, 10 Grandview Road., Bow, NH 03304; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 10/16/15

Anne M. Stelmach, Clerk