Kenneth A. Lorden

v.

Town of Milford

Docket No.: 12956-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $1,290,700 (land $913,100; buildings $377,600) on an 11.3-acre lot with various buildings (the Property). The Taxpayer also owns, but did not appeal, fourteen other lots in the Town with a combined $1,425,100 assessment. The Town submitted the assessment cards for the nonappealed properties, stating it had reviewed the nonappealed properties with the Taxpayer and had concluded the assessments were appropriate. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry his burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) his appraiser estimated a $775,000 value as of April 1992;

(2) despite the zoning in 1992, getting a special exception for commercial use was not assured; and

(3) the existing buildings had very little value and possibly had a negative value due to demolition costs.

The Town submitted a comprehensive report. All of the arguments will not be reiterated here. Generally, the Town argued the Taxpayer did not carry his burden because:

(1) the Property's highest and best use was for commercial use;

(2) the Town disagreed with the Taxpayer's expert's value conclusion; and

(3) the Property's market value was $1,370,300.

The Town also asserted the assessment should be increased consistent with the Town's market-value analysis.

The board's inspector inspected the Property, reviewed the property-assessment card, reviewed the parties' exhibits and filed a report with the board. This report concluded the proper assessment should be $1,459,500. The report was mailed to the parties, and the parties had an opportunity to file comments to the report. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the Taxpayer did not show overassessment.

The following summarizes the value estimates.

Value Summary

Assessment	$1,290,700
Equalized Assessment	$ 928,560
Taxpayer's Market Estimate	$ 775,000
Town's Market Estimate	$1,370,300
Board Inspector's Market Estimate	$1,050,000

To carry his burden, the Taxpayer was required to show that the Property was worth less than the $928,560 equalized assessment. This was not done.

While the board performed extensive review of the submitted reports, the board finds the Taxpayer did not carry his burden for the following reasons.

1) The board's initial judgement was that the Property was worth at least the $928,560 equalized assessment and was certainly worth more than the Taxpayer's $775,000 estimate. This Property has a good location with sufficient frontage and good development potential. Arriving at a proper assessment is not a science but is a matter of informed judgement and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). The board is empowered to rely upon its judgement and experience in deciding a case. See RSA 541-A:18 V (b); See also Petition of Grimm, 138 N.H. 42, 53 (1993). Based on this judgement, the Taxpayer did not show overassessment.

2) The board does not accept the Taxpayer's appraiser's value opinion. The sales approach was the best approach to valuing this land. The appraiser failed to do adequate analysis in the comparable sales approach to support the value conclusion. The time the appraiser spent on the income approach would

have been better spent on performing more research and analysis on the comparable sales approach. The appraiser did not provide sufficient justification for his percentage adjustments in his comparison grids. The board, therefore, lacked confidence in the supportability and validity of these adjustments. Additionally, the board did not accept the appraiser's analysis concerning the Property's highest and best use. The Property was located in the industrial zone, which allowed commercial uses by special exception. (The board's analysis concerning the zoning issue is presented below.) The board agrees some adjustment is probably warranted for the Property's industrial-zone location, but the appraiser's 20% adjustment was not supported and was not reasonable. This 20% adjustment would result in an $18,000 to $40,000 per-acre adjustment, totaling $198,000 to $440,000 for the Property's 11 acres. These numbers are unreasonably high. The board was also concerned about how the appraiser handled the demolition issue, and the board did not agree with the appraiser's locational adjustment, especially to the Wal-Mart sale.

3) The board inspector's report and the Town's report demonstrated the Property's value was at least the equalized assessment if not more.

The Property's industrial-zone location requires special mention. Under RSA 75:1, property must be assessed at "its full and true value *** [,]" which has been interpreted to mean market value. See Brock v. Town of Farmington, 98 N.H. 275, 277 (1953). A property's zoning is a factor in determining highest and best use because the use must be legally permissible. See Appraisal Institute, The Appraisal of Real Estate 280 (10th ed. 1992). The Property was in the industrial zone, but the

allowed, by special exception, all uses permitted in the commercial/business

district. Zoning ordinance paragraph 5.03, p. 18 (1992). It would appear, based on the zoning ordinance, paragraph 10.21 p. 47, and caselaw, that the Property would have qualified for a special exception for commercial use. The board is aware that an abutter applied for a special exception but was denied the special exception. However, only conclusory information was presented on this point. The board also is aware that after tax year 1992, the Property was rezoned at town meeting to an integrated business/industrial zone. Given the information presented, the Property's highest and best use was as potential commercial land with a high probability that a special exception would be granted or the zoning ordinance would be changed. Nonetheless, it would probably be appropriate to make some adjustment for the zoning, and the board kept this in mind while reviewing the parties' reports and the inspector's reports.

The Town asked the board to increase the assessment based on the Town's analysis. The board denies this request. The Town's report and the inspector's report provide some indication of underassessment. The board will not increase this assessment because three issues raise questions about the valuation information, namely: 1) the effect, if any, of the 1992 industrial zoning on the Property's value; 2) the effect, if any, of demolition costs on the Property's value; and 3) the dearth of good comparable sales, especially sales of larger tracts. (Most of the presented sales were for smaller tracts.) These three factors bring into question whether the appealed assessment required an upward adjustment. The Town has the authority under

75:8 to review the assessment for later years and to adjust the assessment if sufficient data is available.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
George Twigg, III, Chairman

_____
Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to C. Wilson Sullivan, Esq., Counsel for Kenneth A. Lorden,

Taxpayer; and Chairman, Board of Selectmen, Town of Milford.

Dated:January 11, 1996

_____

Valerie B. Lanigan, Clerk