Lee D. Woodworth

v.

Town of Moultonborough

Docket No.: 15082-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of $321,300 (land $223,600; buildings $97,700) on a .4-acre lot with a single-family house (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried the burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in December 1992 at foreclosure auction for $232,000 (and $5,000 in back taxes) which is believed to be 85% of its market value; a realtor estimated the Property could be sold 6 months after the purchase for an additional $50,000;

(2) the department of revenue administration's (DRA) stratified ratios indicate the waterfront properties have a general higher level of assessment than all other properties in Town;

(3) Black Cat Island sales suggest an assessment-to-sales ratio of approximately 100%; the revised assessment is close to market value but should be depreciated for deferred maintenance; and

(4) as of April 1994, the market value of the Property was a range of $285,000 to $290,000.

The Town's position was that the proper assessment should be $296,600 and argued the revised assessment was proper because:

(1) comparable sales on Black Cat Island, when adjusted, indicate the assessment falls within an acceptable range of value;

(2) an auction sale can typically range from 50% to 85% of market value; and

(3) location, views and water quality affect value and the Town disagrees that all waterfront properties were assessed at 100% of market value.

Board's Rulings

Based on the evidence, the board finds the Property had a market value of $300,000 and an assessed value of $261,000 ($300,000 x .87). This finding is not based on any one piece of evidence but rather a weighing of several of the arguments presented by the parties.

First, the Town's Exhibit F, comparable sales analysis of the subject to three sales on Black Cat Island, indicated a market value of approximately 5% less than the equalized assessed value. While the board agrees that there is always a market value range in any estimate, the Town's analysis itself coming in under the assessed value is some indication of overassessment.

Second, the board reworked the Town's analysis (Exhibit F) by extracting the adjustments from the assessment-record cards and applying the appropriate replacement cost multipliers and ratios. The board did this for all the building adjustments as contained in the Town's analysis and also included adjustments for differences in land based on the assessment-record card. Based on the board's experience, we find the market generally recognizes some adjustment for the amount of frontage and size of the lot despite the Town's testimony that properties were being sold primarily on a site basis.[1] The indicated market value range of the subject Property based on the board's analysis is approximately $288,000 to $332,000. The sale of lot #56 which indicated a market value of $332,000 had significant adjustments due to its difference in square footage. Consequently, the board gave less weight to lot #56 than to the sales of lots #27 and #34. Those two sales indicate a value range of $288,000 to $307,000. The board is aware of the shortcomings of using building multiplier factors and general equalized ratios in arriving at a specific market value estimate. Consequently, we find this analysis is not conclusive of market value but is given some weight in our conclusion.

Lastly, while not conclusive of disproportionate assessment by itself, the 1994 and 1995 stratified waterfront ratios performed by the DRA indicate that waterfront properties were assessed at 12% to 13% above the Town-wide

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[1]The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

level of assessment. Further, the Taxpayer's assessment-to-sales ratio of properties that sold on Black Cat Island generally comports with the DRA's stratified waterfront ratios.

The board considered the Taxpayer's purchase of the Property at foreclosure auction and the Taxpayer's adjustment for the non-arm's-length nature of the sale. While we commend the Taxpayer for recognizing that some adjustment is necessary to a foreclosure auction sale, the board gives little weight to the 15% adjustment due to the lack of any documentation and consequently, the adjusted sale price is given little weight.

In summary, the board finds that an abatement is warranted not due to the fact that the Town did not recognize any significant factor relative to the Property (the Town responsibly reviewed and adjusted the assessment prior to the hearing), but rather because the market has changed at varying rates for different types of properties within the Town since the last revaluation. The board's review of the above findings results in our conclusion of a market value of $300,000.

If the taxes have been paid, the amount paid on the value in excess of $261,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1995. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steward C. Woodworth, Agent for Lee D. Woodworth, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Moultonborough; and Chairman, Selectmen of Moultonborough.

Date: October 17, 1996

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Valerie B. Lanigan, Clerk

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