Emil M. Nawoj

v.

City of Franklin

Docket No.: 15390-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 assessment of $64,100 (land only) on approximately 1.3 acres (the Property). The Taxpayer owns but did not appeal two other properties (map and lot 032-48-00 assessed at $67,100, and map and lot 074-012-00 assessed at $6,100). The Taxpayer and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this

burden.

The Taxpayer argued the assessment was excessive because:

1) it did not reflect market value;

2) the Property was placed on the market in 1992 for $79,900, and the Taxpayer purchased the Property for $20,000 in August 1994;

3) the assessment card's physical description of the Property did not adequately address the narrow right-of-way, a culvert outlet, and a 75-foot roadway right-of-way; and

4) the Property had a fair market value of $20,000 based on the purchase price.

The City argued the comparable sales it submitted supported the assessment.

BOARD FINDINGS

Based on the evidence and the burden of proof, the board finds the proper assessment to be $33,600. This ordered assessment is based on a market finding of $25,650 times the 1.31 equalization ratio. The board finds this conclusion is supported by the best evidence submitted.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. A property's assessment, therefore, is not unfair simply because it exceeds the property's market value. The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1994 level of assessment was 131% as determined by the revenue department's equalization ratio. This means assessments generally were

higher than market value. The Property's equalized assessment was $48,900 ($64,100 assessment ÷ 1.31 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the $48,900 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

The Taxpayer asserted the Property was worth only $20,000 based on the Taxpayer's 1994 $20,000 purchase price. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length market sale, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The board had two concerns about the Taxpayer's purchase price: 1) the Taxpayer did not submit sufficient information to allow the board to conclude the sale was representative of market value (This remains so even after the board queried the Taxpayer.); and 2) the Taxpayer, at the time of purchase, owned an abutting lot, and the board did not know whether this affected the purchase price. Nonetheless, the board places weight on the purchase because: 1) the Taxpayer's information was consistent with a market-value sale; 2) the Town did not present any contrary evidence; and 3) the revenue department used the sale as qualified in the ratio study.

The City submitted two other basically land only sales (Each sale had a small nonhabitable building.) Comparable four sold October 1995 for $37,000, and comparable five sold July 1994 for $35,000. The location of comparable

four is substantially different than the Property's location. Comparable five abuts the Property, and its lot configuration is similar to the Property. Both the Property and comparable five have only limited waterfrontage compared to the land area. The board decided to take comparable five's sales price, deduct the $8,000 garage assessment and then reduce that number by 5% given comparable five's superior waterfrontage. The board understands that comparable five has 40 feet of owned waterfrontage while the Property's waterfrontage is only an easement, is less than 20 feet and has a culvert on it. All of these factors, warrant a 5% downward adjustment to comparable five's $27,000 adjusted sales price ($35,000 minus $8,000 garage), resulting in a market finding for the Property of $25,650. The board also finds the low sales prices on comparable five and the Property may be reflective of the lots' locations on a right-of-way rather than on a town road. Finally, we note the revenue department used comparable five as a market sales in the ratio study.

The City submitted other comparable sales, but those sales were developed. Therefore, they provided very little help to the board.

If the taxes have been paid, the amount paid on the value in excess of $33,600 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 City has undergone a general reassessment, the City shall also refund any overpayment for 1995 and 1996. Until the City undergoes a general reassessment, the City shall use the ordered assessment for subsequent

years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

For tax years after 1994, the City should review the ordered assessment along with the assessment on the Taxpayer's abutting lot. Specifically, the City might examine whether the two lots should be assessed as one lot either because of a highest-and-best conclusion or because the two lots have legally merged under a City merger ordinance, if one exists.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within thirty (30) days of the clerk's date below, <u>not the date this decision is received</u>. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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. This, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration 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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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Emil M. Nawoj, Taxpayer; and Chairman, Board of Assessors.

Date: April 11, 1997

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Valerie B. Lanigan, Clerk

0006