SW Farms, Inc.

v.

Town of Hollis

Docket No.: 17426-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessments of $2,066 on lot 34, a 4.86-acre lot in current use (CU); and $462,751 (not in current use (NICU) land $115,500; CU land $8,451; buildings $338,800) on Lot 35, a 31.63-acre lot with a horse facility (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were disproportionately high or 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

(1) the Town has improperly assessed two acres of NICU back land as primary site acreage in

alleged retaliation for the Taxpayer placing the balance of the Property in current use;

(2) a recent sale of a portion of the Property indicates a value of $8,400 to $9,000 per acre for NICU back-land is more accurate than the Town's $45,000 per acre value for NICU back-land;

(3) the Town has not reasonably applied Marshall Valuation Service data to accurately estimate the replacement cost of the buildings; and

(4) the Town's argument that it assessed primary sites wherever they occur on a parcel is not supported by the records. Other assessment records indicate that primary sites are always calculated based on frontage.

The Town argued the assessments were proper because:

(1) the assessment was proper, including the four acres NICU assessed at the primary site figure of $45,000 per acre;

(2) the 14-acre back parcel recently conveyed by SW Farms which has one buildable area at the rear of the parcel and cannot be further subdivided supports the Town's methodology of assessing the site off the road frontage;

(3) the Town has consistently and fairly applied the methodology outlined in the land valuation procedure; and

(4) the subject Property can be further subdivided.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be: Lot 34 $2,066; Lot

35 $361,644.

The Taxpayer raised two general arguments as to why the Properties were improperly assessed: 1) the four acres NICU were assessed as though they were a prime site directly on the road; and 2) the replacement cost and resulting contributory values of the buildings are significantly less than that appraised by the Town. The board will address these two general areas separately.

Four Acres NICU

Based on the evidence and testimony, the four acres NICU encompass the driveway and the area around the horse arena and stables approximately 800 to 1,000 feet back from Blood Road. The Taxpayer argued most of the site was such a distance from the road that it should not be valued based on road frontage prices but rather should be assessed as rear acreage. The Town argued that, regardless of the location of the developed site, the four acres capture the prime developable site and should be assessed as such.

The exercise of having to value certain acres NICU which are part of a larger tract in current use is a difficult assignment. However, the board has consistently held that the process of

valuing such land should not be tied to technical mass-appraisal methodology[1], but rather the

[1]"The statute makes the proceeding for the abatement of a tax a summary one, free from technical and formal obstructions. The question is, does justice require an abatement? . . . The justice to be administered is to be sufficiently exact for the practical purposes of the legislature,

exercise must be one in which the property rights embodied in the land NICU should be assessed at market value and those in the remaining land veiled by current use should not. (See John M. Lovett v. Town of Sutton, Docket No.: 15100-94PT; Virginia A. Soule v. Town of Sunapee, Docket No.: 14773-93PT; and John L. Arnold v. Town of Francestown, Docket No.: 8718-90PT).

In this case, the board finds the property rights embodied in the four acres is greater than that normally reflected in rear acreage but not as great as those embodied in a prime residential site developed to its highest and best use in Hollis. The four acres access and support a horse riding arena and stables of a commercial scale and nature. However, the scope of the commercial enterprise is limited significantly by conditions imposed by the Town during the permitting process limiting its size and hours of operation. It is clear from the testimony of the owner, Ms. Susan Dunlap, that by itself, the improvements would likely not generate a positive cash flow. However, the intensity of use and rights that exist are greater than those associated with a horse barn or accessory building to a residence. Further, the stables contain an apartment and the structures are of significantly larger size than those normally of an accessory building to a residential use. Nonetheless, both parties agreed that the Property was currently not developed

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who did not intend to invite the parties to a struggle for costs, or a ruinous contention about trifles. The points to be considered are such as the nature of each particular case presents. They cannot be fixed by an invariable rule. Manchester Mills v. Manchester, 58 N.H. 38, 39."

at its highest and best use as residential property. In fact, both parties agreed that if and when a residence is constructed, it would likely be located in an area closer to Blood Road outside the four acres NICU.

The board finds the Taxpayer's estimated value for the four acres understates the value of its property rights, and conversely, the Town's assessment as the prime site overstates its value. The board finds it should be valued as a secondary site recognizing the facility's size and the current permit for an on-site apartment. Consequently, the board adjusts the assessment of the land NICU for the 2-acre site by 25%. The land assessment for lot 35 is summarized as follows:

2 acres x $45,000 per acre x topo. .95 x .75 (secondary site) =		$ 64,100
2 acres rear land x $15,000 per acre x .9 =		$ 27,000
Well and septic		$ 3,000
Total value of land NICU		$ 94,100
18.75 acres CU land		$ 7,894
Total land assessment	$101,994	

The Taxpayer's argument that the four acres should not be considered to have a value other than rear land fails when the sale of a portion of the Property (13.924 acres) in 1999 for $220,000 is considered. From the testimony and the maps submitted, it is clear that the only building site on the 13.924 acres is at a similar distance from its road frontage as is the Property's site. The parties agreed that basic lot values in Hollis are in the $120,000 to $130,000 range. Consequently, the $220,000 sale indicates the purchasers were purchasing: 1) a desirable building site at the rear of the lot accessed through the less desirable frontage; and 2) excess supplemental land for "gentlemen farm" use and privacy. The board disagrees with the Taxpayer that the sale should be analyzed on a per-acre basis and then applied to valuing the 4

acres NICU. Generally, parcels of land with residential highest and best use are bought on a lot-plus-supplemental-land basis as opposed to a price-per-acre basis.

Buildings' Value

The board finds the Town's building values overstate both their replacement cost and depreciated contributory values. First, the board was unable to locate any horse arena schedule in the department of revenue administration's (DRA) manual that the Town testified was used during the 1986 reappraisal. Consequently, the board compared the Town's arena replacement cost of $15.75 to horse arena costs in the 1997 Marshall Valuation Service manual. The $15.75 price per square foot approaches a good-quality, wood-frame arena which description is significantly superior to the testimony and the photographs submitted. Second, the stable, assessed as a general purpose barn by the Town, has one of its walls common with the arena; yet no adjustment to recognize that factor was specifically made or noted on the assessment-record card. Also, the Town's general purpose barn replacement cost of $22.27 approaches the Marshal Valuation cost of a good-quality wood-frame stable of better quality than the evidence indicates. Third, the apartment in the stable was assessed as if it were a 1,500 square foot free-standing dwelling on a pier foundation. While 30% functional depreciation was applied to the apartment, this calculation also overstates its contributing value due to overstating its size and by not recognizing that it was contained within an existing structure having its own foundation and roof.

The board also reviewed the Taxpayer's tax consultant's (Mr. David Irwin) report and finds it, to some extent, understates the value of the improvements[2].

Consequently, the board on its own has calculated the replacement cost estimate of the improvements which are included in the Marshal Valuation form in Appendix A.

Based on the testimony and review of the photographs, the board has classified the buildings as follows:

1) the arena grade is averaged between average and low cost construction; and

2) the main (one and one-half story) stable area grade is averaged between average and good grade construction recognizing the level and quality of finish of the tack room, viewing area, etc.; as a balance, higher functional depreciation was applied to recognize such level of finishes may not fully contribute their cost to the Property's market value.

The stable replacement cost was revised based on the correct dimensions and include the main 72' x 72' section (first and second floor areas) and the "wrap around" stalls. After review of the DRA replacement cost manual and Marshall Valuation manual, the board concludes the "stable" designation in Marshall Valuation is a more accurate replacement cost estimate than the

[2]The board during deliberations was unable to reconcile the difference in the parties' building square footages. An order, dated October 25, 1999, was sent to the parties directing the Taxpayer to re-measure and sketch the buildings, seeking concurrence from the Town and submit the correct dimensions to the board. The board's calculations are based upon those corrected dimensions.

"general purpose barn" category from the DRA manual. Further, the board determines the stable category includes stalls in the base price, and thus, need not be added separately. The apartment has been added as a lump sum at $18.18 per square foot, the replacement cost estimated by Mr. Irwin. The board checked the Marshall Valuation Residential Cost Handbook for the cost of the apartment areas above garages and found it corresponds closely to the segregated cost estimate in Mr. Irwin's report. Last, the board has calculated the main stable area as a one and one-half story rather than a one story with a hay loft as done by Mr. Irwin. Hay lofts include only the floor structure and supports and do not account for the higher framing costs permitting, in this case, room for an apartment, viewing area and storage. (See general descriptions for shed and farm buildings in section 17, page 1 Marshall Valuation Manual.). The parties' pole storage shed valuations were of similar magnitude, and thus, the board has relied upon the Town's assessment. The paddock fencing is of enough permanency and associated with the building improvements to be considered a fixture. The board finds Mr. Irwin's estimated market value of $10,800 to be reasonable.

In summary, the board finds the land and building assessment is as follows:

Total Land Assessment (see page 5)		$101,994
Building Replacement Depreciated Cost		
(from Marshall Valuation Calculator Cost Form)		$256,900
1997 Equalization Ratio		x .98
		$251,750
Pole Barn Town Assessment ($5,856 x 1.35)	$ 7,900	
Total Assessment for Lot 35		$361,644

For tax year 1997, the 4.86 acres of lot 34 assessed in current use at $2,066 is properly calculated.

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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Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Irwin, agent for the Taxpayer; Karen Marchant, assessor for the Town of

Hollis; and Chairman, Selectmen of Hollis.

Date: December 1, 1999

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Lynn M. Wheeler, Clerk

Appendix A