

Thomas J. and Barbara H. Mulhern

v.

Town of Thornton

Docket No.: 17936-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$91,200 (land \$25,000; buildings \$66,200) on a 1-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because based on five recent comparable sales, all of which were marketed through a realtor using conventional methods, the Property is clearly overassessed.

The Town argued the assessment was proper because it was based on sales used to

establish values during the 1997 revaluation.

Neither party challenged the department of revenue administration's equalization ratio of 1.04 for the 1998 tax year for the Town of Thornton.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$75,300. This assessment is based on a market value finding of \$72,450 multiplied by the Town's 1998 equalization ratio of 1.04.

Based on recent sales (1998 - 2000), it appears the market value for the Property has declined since the time of the sales used to establish the base value for the 1997 reassessment. The properties submitted by the Town in support of the assessment (and the basis for the 1997 reassessment values) occurred in 1994 and 1995, including the sale of the subject Property itself for \$91,000 in 1994.

The board has analyzed the sales submitted by both the Taxpayer and the Town on a sale's-price per-square-foot basis. (See spreadsheet - Addendum A.) It is clear from this analysis that the sales utilized by the Town for the 1997 reassessment had higher indicated sale prices (\$60-to-\$80 per-square-foot range) than the 1998-2000 sales submitted by the Taxpayer which, with the exception of one sale, approach \$50 per square foot.¹ From this analysis, the board concludes the \$50 per-square-foot price is indicative of 1998 market values and provides a market value estimate of \$72,450 (\$50 x 1,449 square feet).

¹ In the board's analysis the Brayton sale and the Mill sale are analyzed in two different fashions. Both properties have a finished basement area. The first analysis uses the living area exclusive of finished basement while the second analysis includes the finished basement area as part of the square footage.

The board understand the Town's argument that the assessment is proportional based on the sales utilized during the reassessment. Indeed, based on the three sales submitted by the Town, the Property appears to have been reasonably assessed at that time. However, based on the recent sales submitted by the Taxpayers, the board concludes the market has changed at a difference rate for Waterville Estate properties than perhaps the rest of the Town. The evidence suggests, including the testimony of the Town's administrator, Candace L. Andrew, that Waterville Estate property values have declined since the reassessment for a number of reasons, including a high village district tax rate.

The board also considered the Town's argument that the Campton sales are not comparable to the Thornton properties for the several reasons itemized in the Town's June 30, 2000 letter. However, reviewing the sales submitted by the Taxpayers, the per-square-foot sale price of the Campton properties do not appear to be significantly different than the Thornton properties, with the exception of the Brayton sale. Even if the board's analysis is limited to the two Thornton sales (Nylen and Machamer), the board's conclusion of \$50 is supported by those two sales.

Last, the board reminds the Town of its RSA 75:8 responsibility to annually review assessments and make revisions to ensure proportionality of assessments throughout the Town. The board understands that this can be a significant task especially for smaller communities that may not have in-house personnel and computer infrastructure to carry this out. However, updates of assessments if warranted by the market data, can cost effectively improve assessment equity and extend the "life" of a full reassessment.

If the taxes have been paid, the amount paid on the value in excess of \$75,300 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 1999. 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas J. and Barbara M. Mulhern, Taxpayers; and Chairman, Board of Selectmen of Thornton.

Date: July 24, 2000

Lynn M. Wheeler, Clerk

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Board/PFDR/17936

ADDENDUM A

Thomas J. and Barbara H. Mulhern

v.

Town of Thornton

Docket No.: 17936-98PT

ORDER

This order responds to the “Town’s” August 8, 2000 letter requesting clarification as to how to allocate the board’s judgement of \$75,300 between land and building values.

The board respectfully declines to allocate the value; the Town shall make this allocation in accordance with its assessing practices. In making a decision on value, the board looks at the Property’s value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer’s entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Thomas J. and Barbara M. Mulhern, Taxpayers; and Chairman, Board of Selectmen of Thornton.

Date: August 23, 2000

Lynn M. Wheeler, Clerk

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