

Anthony J. Carita

v.

Town of Meredith

Docket No.: 18275-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$198,100 (land \$168,400; buildings \$29,700) on a 1.23-acre lot with a single-family seasonal home (the "Appealed Property"). The Taxpayer also owns, but did not appeal, a 26,163 square-foot lot with a single-family home assessed at \$200,400 (the "Non-Appealed Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) adjusting comparable sales along Black Brook Road yields an estimate of the 1996 assessed value of between \$156,000 and \$163,000;
- (2) the Property is a seasonal property and should not be compared to year-round homes;
- (3) the Property was purchased for \$185,000 in 1998 in an arm's-length transaction and the purchase price is a good indication of market value;
- (4) the July 1998 Flegenheimer sale for \$189,900 is the best comparable given its similarity to the Property and the date of the sale; and
- (5) the assessment should be approximately \$172,000 using the selling price and the Town's equalization ratio of .93 ($\$185,000 \times .93$).

The Town argued the assessment was proper because:

- (1) the Taxpayer used inaccurate adjustments not taking into account depreciation when he completed his grid;
- (2) the Taxpayer should have used more recent comparable sales and adjusted them forward to April 1, 1999, rather than using outdated sales and adjusting them to 1996; and
- (3) considering the sale price of the Non-Appealed Property that was owned by the Taxpayer on April 1, 1999, the Taxpayer's entire estate was not disproportionately assessed and no abatement is warranted.

Board's Rulings

When a taxpayer owns more than one parcel, but appeals only one, the board must

consider whether the taxpayer's entire estate is disproportionately assessed to grant an abatement on the appealed parcel.

“When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments of any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation based on all of his properties is unfavorably disproportionate to the assessment of property generally in the town.” Citing Bemis & Bag, Co. v. Claremont, 98 N.H. 446, 449 102a. 2d. 512, 516 (1954). “Justice does not require the correction of errors of valuation whose joint effect is not injurious to the applicant.” Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205, 46A. 470, 473 (1899) (citations omitted).

The parties stipulated the equalization ratio of .93, as determined by the department of revenue administration, is a reasonable indication of the level of assessment for Meredith for 1999. The assessment for the Appealed Property of \$198,100 when equalized by the ratio provides a market value of approximately \$213,000 ($\$198,100 \div .93$).

If the Appealed Property were the only property owned by the Taxpayer in 1999, he would have had to have shown that the market value of the Appealed Property was less than \$213,000. The Taxpayer did submit several sales of properties in the vicinity; however, most of them were in the 1994-to-1996 time frame and were improperly adjusted to 1996 rather than to the year under appeal, 1999. Thus, the board gives them little or no weight. However, the sale of Map 3, Lot 18 in July 1998 for \$189,900 and the Taxpayer's purchase of the Appealed Property in January 1998 for \$185,000 do provide some market data closer to the 1999 tax year. However, the board finds the Taxpayer's purchase was not entirely an arm's-length transaction inasmuch as the seller was under undue motivation to sell, the sale price was negotiated without a realtor's commission and the Taxpayer received favorable financing from the seller.

Nonetheless, taking those factors into consideration, the board concludes the Taxpayer's

transaction and the sale of Map 3, Lot 18 provides some indication that the Property had a market value of approximately \$195,000 to \$200,000 for tax year 1999.

That finding, however, does not conclude the necessary analysis because, as stated above, the board must consider the other property owned by the Taxpayer. The Non-Appealed Property was assessed at \$200,400, which when equalized indicates a market value of approximately \$215,500 ($\$200,400 \div .93$). The Taxpayer sold this property in October of 2000 for \$325,000.¹ The Taxpayer argued that he was under some duress to sell the property as a balloon payment for the Appealed Property was impending. If anything, then, this would have reduced the sale price rather than increase it. Based on the Taxpayer's sale of the Property, the board concludes the Non-Appealed Property was significantly more underassessed than any possible slight overassessment of the Appealed Property. Therefore, the board denies the request for abatement.

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

¹ While a sale of a property is not necessarily conclusive evidence of its market value, where it is demonstrated that the sale was an arm's-length market sale, the sale price "is one of the best indicators of that property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

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

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Anthony J. Carita, Taxpayer; and Chairman, Board of Selectmen of Meredith.

Date: June 22, 2001

Lisa M. Moquin, Temporary Clerk