Regan Trust

v.

Town of Moultonborough

Docket No.: 18685-00PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2000 assessment of $146,200 on a 4.0-acre vacant lot (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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, 138 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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) a written appraisal and testimony by Louis C. Manias (Manias Appraisal) indicates the market value of the Property, as of April 1, 2000, is $75,000;

(2) assessments should be based on market value rather than comparisons to other assessed

commercial property;

(3) the market value of the Property should be comparable to that of the three sales analyzed in the Manias Appraisal, which, when adjusted, yields a market value estimate of $75,000 for the Property; and

(4) the Town's assessment lacks support because it is not based on an appraisal by a licensed appraiser.

The Town argued the assessment was proper because:

(1) while the Town has one commercial zoning district, the year 2000 update classifies three commercial areas, with substantially varying base rates ($32,000 to $85,000 per acre), depending on a number of factors;

(2) a higher comparative base rate has been applied to the Property because of several attributes, including location, frontage, topography and access to a public sewer line; and

(3) the Taxpayer failed to meet its burden of proof.

Neither party disputed the Town's tax year 2000 level of assessment was 100%, the estimate used by the department of revenue administration in its equalization calculations. The issue is therefore whether the Town's assessment of $146,200 reflects the market value of the Property as of April 1, 2000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $100,000.

Following the August 6, 2002 hearing, the board directed its tax review appraisers, Mr. Stephan Hamilton and Ms. Cynthia Brown, to analyze the information submitted, inspect the Property and file a report with the board, with copies sent to each party. (See RSA 71-B:14).

The report ("Report") was filed on January 17, 2003, with the parties being provided 20 days for comment. At the request of the Taxpayer, the board granted a limited hearing relative to the Report (see Taxpayer's February 10, 2003 "Objection" and the board's Order dated February 25, 2003). At the limited hearing held on March 20, 2003, the parties were given a full opportunity to ask Ms. Brown and Mr. Hamilton questions about the Report.

Extensive testimony and evidence were received by the board during both the initial August 6, 2002 hearing and the March 20, 2003 limited hearing on the Report. In total, three estimates of value are in evidence: 1) the Town's assessed value of $146,200; 2) the Manias appraisal for $75,000; and 3) the Report which estimated a market value of $154,000. The board finds that none of the estimates of value alone are conclusive of the Property's market value.

The board apologizes for the time it has taken to issue a decision in this case; however, the board has extensively reviewed the records of the hearings and the extensive documents submitted by the parties and the Report and weighed the varied and often conflicting testimony and evidence on the comparable sales submitted by the parties. The board would also note that, many times it is easier to value an improved property rather than vacant land such as the Property because many of the uncertainties regarding use of vacant land cannot be resolved until a specific development project is undertaken.

General Findings

Before commenting specifically on both the Manias Appraisal and the Report, as well as the Town's evidence, the board believes the following general findings of the lot's capabilities and limitations are important in understanding the board's value conclusion.

The Property consists of approximately four acres with 463 feet of frontage on Route 25

in a commercial zone adjacent to the Center Harbor town line. The lot is generally wood and has good visibility by being at or slightly above grade of Route 25. Given the Property's size, it is legally capable of being subdivided into three lots (because the Town's commercial zone requires 40,000 square feet and 150 feet of road frontage for each lot). Other lots in the general vicinity have the minimum road frontage dimensions and have sizes of 1.25 to 2 acres.

The Property contains no evidence of wetlands limiting development. The Taxpayer raised the specter of possible ledge concerns in any development of the Property. While ledge may be a factor in such undeveloped land, no specific evidence was submitted of ledge limitations. Further, the board notes that properties to the north and south and across Route 25 have been developed with commercial structures. Consequently, we find the Taxpayer did not carry its burden to show that ledge is a factor limiting the value of the Property.

Another issue with potential impact on value is whether the Property would either be required to,[1] or whether it would be financially feasible to, connect to the public sewer located on the east side of Route 25. After weighing the conflicting evidence, the board is persuaded that the existence of a public sewer line is a positive attribute and could be utilized, as it was in the

development of Lot 62E just to the north of the Property. The board, therefore, agrees with the

[1] Town Exhibit B contains the Bay Sewer District's ordinance which at Section 204 requires any building located within 100 feet of the public sewer to connect to it. Exhibit B also contains documentation that an extension of the sewer district was approved in 1996 so as to encompass all land in this area within 250 feet from the Route 25 centerline. The board, however, is unable to conclude, as the Town argues, that this increases the 100-foot proximity requirement for hookup to 250 feet. If the hookup proximity remains at 100 feet, it is possible that a building could be located on the Property at a distance greater than 100 feet from the sewer line on the

Town that the sewer line along Route 25 adds value to the Property.

Manias Appraisal

The board finds the Manias Appraisal underestimates the Property's value on several accounts.

First, Mr. Manias testified that he was unaware when he performed the appraisal of Town zoning lot coverage restrictions being 50% of the lot area. Such a zoning requirement is a significant factor to be aware of when making adjustments between properties that are substantially dissimilar in size such as Comparable #2 in his appraisal.

Second, the Manias Appraisal valued the Property based on a "site" unit of comparison. Such a unit of comparison in and of itself is not necessarily inappropriate for valuing the Property, but given the Property's ample size and road frontage, careful consideration must be given to its subdivision potential in comparison to other lots. In this regard, while some adjustment was made for exposure and road frontage, no adjustments were made for Comparables #1 and #2, both of which had significantly less road frontage, and thus could not be legally subdivided.

Third, the Manias Appraisal did not consider the sewer district amendments filed by the Town and whether the Property had either a legal requirement or a financially feasible opportunity to connect to the public sewer. However, as the board has already noted, since access to public sewer is an option and Lot 62E made the connection, it is a factor that should have been more carefully considered and adjusted for in the Manias Appraisal.

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southeast side of Route 25.

Fourth, much emphasis was placed on the fact that Comparable #3 is nearly identical in acreage and frontage and sold within a month of the April 1, 2000 assessment date, and thus, is the most comparable property. While similar in size and frontage, the board finds the evidence is clear that Comparable #3 had significant wetlands at the time of the sale. Such wetlands were noted on the residential subdivision plans (part of Municipality Exhibit D) depicting the two lots that were assembled for the March 2000 sale. Further, as the board noted during the hearing, several times a year its members travel Route 25 (because of its eminent domain responsibilities) and a view of Comparable #3 clearly shows wetlands adjacent to the area that was developed for a storage facility subsequent to the sale. The board finds the significant amount of wetlands of Comparable #3 would limit not only the area that could be developed but also the nature of the development that would likely occur. This is a strikingly different condition than that which exists at the Property. Consequently, the board believes Comparable #3 would have to be substantially adjusted for the presence of the wetlands to provide a proper indication of value for the Property.

Report

The Report utilized a "per-acre" unit of comparison. Similar to the board's finding of the Manias Appraisal's "site" unit of comparison, the "per acre" unit of comparison, in and of itself, is not necessarily an inappropriate appraisal method. However, the Report relied upon usable acreage in comparing Comparable #3 to the Property without making similar adjustments to the subject Property or Comparables #1 and #2 for their usable acreage based on the Town's 50% lot coverage requirement. To be consistent either total or usable acreage needs to be used throughout the analysis with appropriate adjustments for the relative utility of the lots. In this

case, the board finds "usable acreage" is a more meaningful unit of comparison than total acreage and the Report's calculations should have been revised to reflect the Town's 50% coverage restriction.

Again, the board notes that the potential access to sewer is a factor that should be given some weight in valuing the subject Property. The Report assumed that only on-site utilities would be available for its development, but an adjustment for the public sewer option should have been made.

Further, given the Property's ability to be subdivided, the Report did not adequately adjust for the significant size difference between Comparable #2 and the Property.

And last, as noted in the board's findings relative to the Manias Appraisal, Comparable #3 is significantly inferior and should be adjusted for the presence and the amount of the wetlands.

The Town's Evidence

For its part, the Town presented assessments of other commercial properties to show that base values in the Town ranged from $32,000 to $85,000 per acre and that a number of factors supported the highest base rate for the primary acre plus additional value for "Excess Front" land of two acres ($60,000) and "Excess Rear" land ($1,200). The Town's representative stated she possessed an analysis to support the assessed values, but did not bring it to the hearing and so evidence derived from actual sales was lacking from the Town. The Town presented photographs of the Property and several of the Taxpayer's sales comparables. The Town also noted that $30,000 in additional fill costs were necessary to construct the storage facility (Comparable #3) and that additional site development costs (initially estimated at $20,000 but

actually costing $49,000) were incurred by the buyer of Comparable #2. The Town also emphasized the Property had the potential for subdivision into more than one lot. While the board noted and considered this evidence, it was insufficient for the board to conclude the Town's total assessment of $146,200 was proper.

Market Value Conclusions and Order for Abatement

For all these reasons, the board finds the value of the Property lies between the substantially different estimates made in the Manias Appraisal and the Report submitted by the board's tax review appraisers and that the Property was overassessed by the Town. The board is empowered to utilize its own expertise in making value judgments. See RSA 76:16-a, I; and RSA 541-A:33, (the board is authorized to make "inquiry and investigation" and issue an order "as justice requires," utilizing its "experience, technical competence and specialized knowledge . . . in the evaluation of the evidence.")

As stated earlier, definitively quantifying adjustments to arrive at an unequivocal market value for undeveloped land is difficult given the many factors and uncertainties that the board has already mentioned in its general findings. However, after adjusting for the limitations noted above, the board finds the indicated market value ranges from approximately $90,000 to $110,000 and consequently the board estimates the Property's market value at $100,000. Because of the estimated nature of a number of the adjustments, the board has not set them down in a new comparison grid, but rather directs the parties to the board's general findings and the specific critique of the available evidence regarding the Property submitted by the parties and the board's tax review appraisers. Cf. Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (board "not required to elaborate further about the exact derivation of its findings," and "specific,

although not excessively detailed, basic findings in support of [its] ultimate conclusions" are sufficient).

If the taxes have been paid, the amount paid on the value in excess of $100,000 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 2001 and 2002. 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, <u>not the date this decision is received</u>. 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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Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Peter G. McGrath, Esq., counsel for the Taxpayer; Mary E. Pinkham-Langer, representative for Town; and Chairman, Selectmen of Moultonborough.

Date: July 9, 2003

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Anne M. Bourque, Deputy Clerk

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