Greenland Glass Factory, LLC

v.

Town of Greenland

Docket No.: 19774-02PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2002 assessments of: (i) $1,445,300 (land $764,200; buildings $681,100) on Map R21, Lot 44, a one story industrial building on an 11.7 acre lot; and (ii) $157,300 (land only) on Map R21, Lot 44D, a 4.0 acre vacant lot, (collectively, the "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, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessments were higher than the general level of assessments in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the Property (consisting of two adjacent lots) was purchased on June 15, 2002 for $1.2 million;

(2) the settlement/closing documents reflecting this purchase, including the "PA-34" (Taxpayer Exhibit 1) required by the state and signed under oath, indicate this purchase price was the market value of the Property;

(3) the building on the Property is a "mill" structure that has been vacant for approximately 18 years;

(4) the highest and best use of the Property is as a commercial "development site";

(5) the Taxpayer has been attempting to develop the Property, but is facing continuing opposition and ongoing litigation by residential abutters; and

(6) the assessment should be abated by applying the purchase price and the Town's level of assessment ($1.2 million x 92.2% = $1,106,400).

The Town argued the assessments were proper because:

(1) the purchase price submitted by the Taxpayer does not establish market value;

(2) the documents associated with this purchase indicate the Taxpayer obtained a loan for $1.5 million, which substantially exceeded the alleged purchase price ($1.2 million);

(3) applying a loan to value ratio of 75% to 80% indicates a value supporting the assessment;

(4) the Taxpayer's principal (Carol Hughes) owns abutting properties and in fact purchased them at the same time (October, 1993) as the prior owner acquired the Property;

(5) prior to the June 15, 2002 purchase date, the Town granted variances permitting commercial development in February and April, 2002;

(6) the Property is assessed consistently with other properties in the Town;

(7) the Town has reviewed comparable sales supporting the assessment, including 95 Ocean Road;

(8) the Property has good access and visibility to Route I-95, an interstate highway, which makes it a very desirable location for a large retail shopping center; and

(9) the Taxpayer failed to sustain its burden of proving the Property was disproportionately assessed.

The parties stipulated the level of assessment in the Town was 92.2% for tax year 2002.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to sustain its burden of proving the Property was disproportionately assessed.

In some cases, the price paid for property can be an indication of its market value, but clearly there are "numerous other factors" that should be considered. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255 (1994) and cases cited therein.[1] The Town raised serious questions regarding whether the purchase price reported (on the PA-34 for transfer tax reporting purposes) and relied upon by the Taxpayer allows such a simple market value conclusion, especially in light of the other facts presented by Mr. Todd Haywood, the Town's assessor.

The Taxpayer did not present any appraisal, comparable sales or other evidence of the market value of the Property, but relied entirely on the purchase price. Also absent was any direct witness testimony or other evidence. Instead, the Taxpayer relied entirely on its tax representative (Mr. Robert Mongan), who emphasized the settlement/closing documents (including the PA-34) and, upon questioning, his conversations with his client (Carol Hughes) regarding the purchase. The PA-34 statement, which Mr. Mongan emphasized is signed under oath, is merely an opinion by the buyer (in this case, the PA-34 was signed by Ms. Hughes, the principal owning the Taxpayer), but is not necessarily probative of market value. It is, of course,

[1] Factors mentioned by the supreme court to determine whether the purchase price is a good indication of market value include: "whether the sale was an arm's length transaction, whether additional incentives were offered, whether unusual duress existed . . . and whether some relationship existed between the buyer and seller that would influence the sale price." Id.

common knowledge that some buyers pay more than market value for property and others pay less. Mr. Mongan's reliance on the recitation of value in the PA-34 is therefore misplaced.

The parties agree the highest and best use of the Property is for commercial development, probably as a regional shopping center. There was some evidence the Property is being actively marketed for such use by the Taxpayer, but no facts were presented regarding its value in that use or even the price at which it is being offered for sale.

The burden is, of course, on the Taxpayer to establish disproportionality. In this appeal, the evidence was simply too thin to support such a finding. The board is also cognizant of the Town's other arguments, such as typical commercial loan to value ratios (75% to 80% in many cases), and the financing for $1.5 million obtained in connection with the purchase, as well as the comparable sales evidence noted above. This evidence, considered as a whole, supports a substantially higher market value conclusion for the Property than $1.2 million, and that higher value supports the proportionality of the assessment. Consequently, the appeal is denied.

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(f). 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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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert Mongan, 40 West Brook Street, Manchester, New Hampshire 03101, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Greenland, Post Office Box 100, 575 Portsmouth Avenue, Greenland, New Hampshire 03840.

Date: 2/27/06

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Anne M. Stelmach, Clerk