Ernst Bunning

v.

Town of Durham

Docket No.: 20126-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $444,800 (land $314,100; buildings $130,700) on Map 11, Lot 31-7 consisting of a 1.01 acre lot on Oyster River improved with a single-family residence (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) the dwelling has the smallest living area of houses in the "Riverview" neighborhood and has only a single car garage; most homes in the Durham market are larger;

(2) the Property has the highest assessment per square foot of any waterfront property in the "Riverview" neighborhood;

(3) the lot is only one acre which is the minimum size allowed by zoning, and because of setback requirements and the septic system location between the dwelling and Riverview Road, it would be very difficult, even with a variance, to add onto the dwelling;

(4) a comparable property at 3 Riverview Court received a nearly $100,000 abatement from the Town, yet no abatement was given to the Property; and

(5) an appraisal prepared by The Stanhope Group estimates the Property's market value as of April 1, 2003 at $340,000.

The Town argued the assessment was proper because:

(1) the Stanhope Group appraisal contained inconsistent time trending, undocumented and incorrect adjustments for views and undocumented and insufficient adjustments for differences in gross living area;

(2) the 2003 reassessment resulted in good assessment equity statistics both in 2003 and 2004 indicating the assessment models utilized by the Town were market related; an analysis of waterfront sales in Durham that have occurred subsequent to the reassessment shows the waterfront properties were conservatively assessed and have continued to appreciate faster than other property types in Town;

(3) 3 Riverview Court sold in July 2003 for $425,000 and based on evidence submitted during the abatement process by the purchasers, the sale price reflected significant deferred maintenance that the Town was initially unaware of; and

(4) a market analysis of four comparable sales (Municipality Exhibit A) estimates the Property's market value at $450,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $421,600 (land $314,100; buildings 107,500). This abatement is based upon applying 15% depreciation to the dwelling and garage (including the fireplace) to recognize the economic obsolescence of the small size of the improvements and the difficulty of enlarging the dwelling and garage due to the small size of the lot and the zoning setback requirements.

The board acknowledges the good assessment statistics that resulted from the 2003 assessment (in particular in 2004 where the weighted mean ratio only dropped to 96% and the coefficient of dispersion was 6%) indicate that overall the assessment models were market derived and calibrated and applied in a consistent manner. This results in most properties of typical size, style and market desirability being reasonably assessed. In this case, however, the board finds sufficient evidence was submitted that additional depreciation is warranted due to the Taxpayer's waterfront lot being relatively small and improved with a 1960 vintage ranch that is also small by 2003 standards and has real limitations in being enlarged. The assessment-record cards and the Taxpayer's "Exhibit J" indicate most homes in the "Riverview" neighborhood have "effective area" generally in the 2,500 to 4,000 square foot range while the Property has only 1,797 effective square feet. The Taxpayer presented unrefuted evidence that the buildings could not be added onto, without a variance, because of the septic system's location and the tight zoning setbacks. While there is the potential for expansion to occur vertically (adding a second floor to the ranch), it is questionable how feasible it might be given the difference between the construction features and building codes of a 1960 structure and those customary in 2003.

Consequently, the board concludes the Property would be at a competitive disadvantage if listed for sale and competing with most other properties in the Durham market that are either

larger or more adaptable to expansion. As a result, the board has estimated, based on its experience[1], a market adjustment of 15% on the improvements.

The board finds no basis exists for a further abatement to the extent requested by the Taxpayer. The board gives no weight to the market value conclusion of The Stanhope Group appraisal, because the adjustments lack good documentation and are either inconsistent or inadequate based on the testimony and evidence presented by the Town. Also, the Town adequately described the basis of the abatement of 3 Riverview Court and why it was specific to that property and not applicable to the Taxpayer's Property.

If the taxes have been paid, the amount paid on the value in excess of $421,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

[1] See RSA 71-B:1; RSA 541-A:33, VI ("The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."); and <u>Appeal of Nashua</u>, 138 N.H. 261, 264-65 (1994).

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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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Ernst Bunning, 18 Riverview Road, Durham, NH 03824, Taxpayer; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 1/18/06

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Melanie J. Ekstrom, Deputy Clerk