

Edward and Carol Colbeth

v.

Town of Sanbornton

Docket No.: 20188-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$413,700 (land \$365,600; buildings \$48,100) on Map 17/Lot 47, on a 1.31-acre lot improved with two camps (the “Property”). The Taxpayers were granted leave to not attend the hearing. 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, 138 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.

Based on their written submissions, the Taxpayers argued the assessment was excessive because:

- (1) an appraisal performed on the Property for 2000, if trended forwards to April 1, 2003 utilizing 10, 15, and 20 percent for years 2001, 2002, and 2003 respectively, indicates a market value of \$333,960;
- (2) applying the equalization ratio of 91% provides an indicated assessed value of \$303,904;
- (3) the assessment-record cards contain some incorrect physical data;
- (4) the assessment increased 115% from the 2000 assessment of \$192,800; and
- (5) a sewer easement restricts usage of the lot.

At hearing the Town submitted a valuation report (“Report”) (Municipality Exhibit No. A) which estimated a market value for the Property as of April 1, 2003 of approximately \$400,000 based on a sales comparison analysis of three comparable sales. Applying the Town’s equalization ratio of 91.5% to the \$400,000 market value indicates the proper assessment should be \$366,000.

The Town argued the revised assessment was proper because:

- (1) a residual land analysis (Report at 14) indicated a value for the land in the \$335,000 to \$380,000 (rounded) range; and
- (2) the sales comparison analysis of the Property as improved, indicated a market value of approximately \$400,000 by placing most weight on comparable sale number 1.

Board's Rulings

Based on the Taxpayers' submissions and the Town's testimony at hearing, the board finds the 2003 weighted mean ratio of 91.5% as determined by the department of revenue administration is a reasonable estimate of the level of assessment for the year under appeal.

Based largely on the Town's evidence, the board finds the proper assessed value to be \$366,000. This finding is based upon applying the 2003 equalization ratio of 91.5% to a market value estimate of \$400,000. The board has not allocated the assessment between the land and building but the Town shall make this allocation in accordance with its assessing practices.

RSA 76:11-a.

The board is unable to give any significant weight to the Taxpayers' analysis of applying cumulative market trending factors to their 2000 appraisal. The 2000 appraisal is three years prior to the year under appeal and the real estate market has changed to such an extent that market trending factors may not accurately estimate the Property's 2003 market value. While the board finds the Taxpayers recognized the 8% time adjustment factor utilized in the 2000 appraisal was conservative and applied a higher amount, utilizing such old market data to estimate a 2003 indication of market value is an unreliable approach.

The board also considered the Taxpayers' arguments relative to incorrect physical data and the sewer easement on the Property, but finds them either negligible or inconclusive as to what the proper assessed value should be. As the Town noted during hearing, the vast majority of the assessed value (88%) is attributable to the land and thus any slight error in the listing of the building, does not materially affect the assessed value. Similarly, the Taxpayers did not show how the location of the sewer easement impacted the utility and market value of the lot other than asserting that it did. The presence of and accessibility to sewer is a positive factor for

utilizing the Property on either a seasonal or a year-round basis and any maintenance or repair that may occur to the sewer line is so infrequent that it is not normally recognized in the market (barring the showing of extraordinary circumstances which the Taxpayers did not make in this case).

The board reviewed the Town's submission which contained a sales comparison analysis of three comparable properties that sold in 2001 and 2002 (time trended to 2003) and a land residual analysis of those three sales indicating a market value estimate for the land component. The board notes the land residual calculation performed by the Town indicates a market value of the land alone that is in excess of the market value of the improved Property as argued by the Taxpayers. The board has reviewed the adjustments and time trending applied in this sales comparison grid and agrees with the Town that an estimate of market value for the Property as of April, 1 of \$400,000 is reasonable and supported by the Town's analysis and documentation.

If the taxes have been paid, the amount paid on the value in excess of \$366,000 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, 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(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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Edward Colbeth and Carol Colbeth, 384 Weir Road, Yarmouth Port, MA 02675, Taxpayers; and Chairman, Board of Selectmen, Town of Sanbornton, P.O. Box 124, Sanbornton, NH 03269.

Date: June 9, 2006

Anne M. Stelmach, Clerk