James E. and Christel Alden

v.

Town of Randolph

Docket No.: 20229-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 ad valorem assessment with respect to a single-family home on a 12.5-acre lot (the "Property"). 10.4 acres of the Property, having an undisputed value of $9,000, were placed in current use prior to the assessment date of April 1, 2003 and the Taxpayers are not appealing the $1,699 current use assessment pertaining thereto. The remaining ad valorem assessment of $240,700 (land not in current use $28,300; buildings $212,400) is the subject of this appeal. 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.

The Taxpayers argued the assessment was excessive because:

(1) they purchased the Property on October 28, 2002 for $247,000;

(2) this purchase was an arm's-length transaction with the seller represented by a real estate broker who publicly listed and marketed the Property for several months;

(3) subsequent to the negotiation and purchase of the Property, the Taxpayers applied for, and were granted, current use classification for 10.4 acres and do not dispute the current use assessment of $1,699 and land value of $9,000 reflected on the assessment record card and Taxpayer Exhibit 1;

(4) the rate of appreciation in the market, as confirmed by the Town's assessing contractor, was 6% per annum (0.5% per month); and

(5) applying this rate of appreciation to the purchase price and adjusting for the Town's level of assessment results in an abatement.

The Town argued the assessment should be adjusted only to the extent shown below because:

(1) there is reason to believe the purchase of the Property may not have been an arm's-length transaction;

(2) a nonprofit (The Trust for Public Land – the "Trust") was involved in the subdivision and sale of three lots, including the Property (as shown in Municipality Exhibit A);

(3) the subsequent sale of the two other lots to the federal government by the Trust in November, 2003 indicates the Property's purchase price was 'subsidized' by $36,000 and therefore the purchase price paid ($247,000) did not reflect its market value;

(4) the Town did not report the Taxpayers' purchase as a qualified sale to the department of revenue administration ("DRA") for purposes of determining the Town's equalization ratio; and

(5) based on the calculations contained in Municipality B, the Town proposes a lowered assessment of $228,947 for the Property.

The parties stipulated the level of assessment for tax year 2003 was 80.9%.

Board's Rulings

Based on the evidence, and for the reasons explained below, the board finds the proper ad valorem assessment to be $197,500 (rounded). When added to the non-appealed current use assessment of $1,699, the total assessment on the Property becomes $199,199.

The Taxpayers presented undisputed evidence that they purchased the Property (designated as "Lot B" on their deed) for $247,000 on October 28, 2002 from its long-time owner, Dr. Edward S. Garcia, who had acquired the land in 1970. See Municipality Exhibit A. The sale was facilitated by the Trust, who apparently advised and helped Dr. Garcia create a 3-lot "minor subdivision" (in part to help preserve public access to the so-called "Castle Trail") and who acquired the two adjoining properties (Lot A and Lot C) from Dr. Garcia on the same date and later sold them to the federal government. As part of the subdivision process, the Property was listed and marketed by a real estate broker and sold to the Taxpayers in an arm's-length transaction. Prior to the April 1, 2003 assessment date, the Taxpayers placed 10.4 acres of the Property in current use. As shown on the assessment record card and Taxpayer Exhibit 1, the Town estimated the ad valorem value of the land in current use at $9,000.

The board finds the purchase price is the best evidence of the market value of the Property in this case. See Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988), citing Poorvu v. City of Nashua, 118 N.H. 646, 648 (1978) ("[t]he price paid by the owner is one of the best indicators of that property's value"). At the hearing, however, the Town argued an extra $36,000 (above the $247,000 purchase price) should be attributed to the market value of the

Property. This amount is the difference between the price paid by the Trust to Dr. Garcia for Lots A and C on October 28, 2002 ($73,000) and the price the Trust received for these lots from the federal government ($109,000) one year later (on November 17, 2003). While the board understands the Town's supposition and motivation for attempting to attribute this higher value to the Property at the hearing, there is no evidence, either in the form of testimony or documentation, that the seller (Dr. Garcia), the buyers (the Taxpayers) or the Trust, for that matter, actually contemplated or arranged a selling price for the Property that was less than its market value (in the hope that the alleged shortfall of $36,000 would be recouped more than one year later when the Trust sold Lots A and C to the federal government). The board further notes the Town did not state this supposition as the reason for denying the Taxpayers' abatement application (see Taxpayer Exhibit 1), but instead introduced it for the first time at the hearing, according to the Taxpayers.

It is also unclear how the seller (Dr. Garcia) would have been able to recoup this alleged difference in value on the later sale to the federal government by the Trust. Even if the Town is correct in supposing that Dr. Garcia sold other property (Lots A and C) to the Trust for $36,000 less than their actual market value, this may have been because he intended to make a non-cash contribution to this organization rather than because he intended to sell the Property (Lot B) to the Taxpayers for a price below its market value.

The Town acknowledged it had no actual evidence that the Property was sold for less than its market value. The Town stated, however, that it has acted consistently on its suppositions, noting that it followed the DRA's rules by not reporting the sale of the Property as a qualified sale for equalization purposes. The board has reviewed the DRA's reporting rules carefully. While REV 2804.01(a)(6) and the DRA's Equalization Manual do authorize the

exclusion of sales to or by "Charitable organizations" because they may not be at "arms length," the Town has discretion to include such sales "if information . . . regarding the terms and marketing of a sale . . . show that the sale meets the criteria of an arm's length transaction." See DRA, 2003 Equalization Manual at 65. Thus, the fact the Town excluded the sale (by Dr. Garcia, not the Trust, to the Taxpayers) in reporting to the DRA is clearly not dispositive of the issue of whether the sale was at arm's length for market value. Indeed, the Taxpayers presented credible evidence and sustained their burden of proving the Property was purchased in an arm's-length transaction (negotiated through a real estate broker representing Dr. Garcia) at market value, and was not a bargain purchase.

The Taxpayers agreed with the Town's assessing contractors that property values were appreciating at an average rate of 6% per annum (0.5% per month). The indicated market value of the Property as of the assessment date (April 1, 2003) is therefore $253,175 ($247,000 x 1.025). For ad valorem taxation purposes, this value should be reduced by the $9,000 value of the land (10.4 acres) placed in current use, leaving $244,175 as the indicated value of the land and buildings not in current use. Applying the Town's agreed level of assessment of 80.9% to this indicated value results in an ad valorem assessment of $197,500 (rounded) for the land and buildings not in current use; when added to the current use assessment of $1,699, the total assessment is $199,199 for the Property.

If the taxes have been paid, the amount paid on the value in excess of $199,199 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

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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: James E. and Christel Alden, 1095 US Route 2, Randolph, New Hampshire 03593, Taxpayers; and Chairman, Board of Selectmen, Town of Randolph, 130 Durand Road, Randolph, New Hampshire 03593.

Date: October 6, 2005

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Anne M. Stelmach, Clerk