Edward H. and Dianne M. MacDonald

v.

Town of Hampton

Docket No.: 20235-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessments of Map 299/7/1 $217,000 (land $152,000; buildings $65,000) a camp on a 5,000 square-foot lot at 21 Epping Avenue ("Lot 21"); and Map 299/8/1 $214,900 (land $152,000; buildings $62,900) a camp on a 5,000 square-foot lot at 25 Epping Avenue ("Lot 25") (collectively the "Properties"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) the acquisition from the Town of the land of Lot 21 for $125,500 in February of 2003 establishes the land assessment of $152,000 is too high;

(2) the Town's depreciation rate on the buildings is arbitrary as there are other, newer buildings that received higher depreciation;

(3) applying the sale price of the land to both Lot 21 and Lot 25 and applying a 40% depreciation to the buildings and adjusting it by the Town's equalization ratio of 94.2% indicates the proper assessments should be $170,300 for Lot 21 and $168,500 for Lot 25; and

(4) a number of sales of other lots in the neighborhood indicate variable assessments and practices.

The Town argued the assessments were proper because:

(1) the sale price of Lot 21 to the Taxpayers was a conservative value and not reflective of its market value as of April 1, 2003;

(2) the indicated lot values extracted from improved properties support the Town's assessment of $152,000 for the lots;

(3) an assessment-to-sale ratio study of lot sales in the Taxpayers' neighborhood that occurred in late 2002 and into 2003 indicate, if anything, that properties are underassessed;

(4) the vacant land sale at 27 Plymouth Avenue for $225,000, while in a slightly better neighborhood, supports the Town's assessment; and

(5) a number of the sales submitted by the Taxpayers have unique issues that affected their sale prices and are, thus, not truly comparable to the Properties.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove their assessments on the Properties were disproportionate. The board will address the Taxpayers' contentions as presented.

First, the board finds the Taxpayers' acquisition of the land interests of Lot 21 from the Town is not indicative of the lot's market value as of April 1, 2003. As explained by the parties, many lots in the Taxpayers' neighborhood have, in the past, been owned by the Town and leased to the owners of the cottages on the lots. In this case, the Taxpayers own both the land and buildings at Lot 25, but, prior to February 2003, leased the land of Lot 21 from the Town. In October 2002, the Taxpayers inquired about acquiring Lot 21 from the Town and the Town's assessor, Mr. Estey, estimated Lot 21's land value conservatively at $125,500. Based on the testimony from Mr. Estey, it is clear his estimate of $125,500 was based on a valuation analysis that was performed for a 2002 reassessment that was put on hold until 2003. The valuation was based on sales that occurred prior to April 1, 2002 and only time adjusted to September or October of 2001. Consequently, the $125,500 value was more reflective of Lot 21's market value sometime in late 2001 to early 2002.

Evidence contained in Municipality Exhibit B suggests, by comparison of the Town's equalization ratios, the market was appreciating at approximately 1% per month during the 2001 to 2003 time period. Thus, adjusting the Town's estimated market value as calculated for the 2002 reassessment by1% per month for 12 to 18 months results in a market value estimate much closer to the Town's $152,000 assessed value than the Taxpayers' purchase price. While the board understands the Taxpayers' argument that the sale was consummated in February 2003, and thus, should be indicative of market value at that time, based on the testimony and the

uniqueness of the Town owning and leasing lots, the board finds the $125,500 is indicative of a value one to one and one half years prior to that date.

The Town's extracted lot values as contained in Municipality Exhibit B also supports the Town's assessed value as being more reflective of market value than the sale price. Further, the Town's assessment-to-sale ratio study, contained as part of Municipality Exhibit A, indicates that lots in the Taxpayers' neighborhood had assessment-to-sale ratios generally less than 94.2% indicating properties in the Taxpayers' neighborhood were generally assessed lower than the Town's 94.2% level of assessment.

The board finds the Taxpayers' assertion that the building depreciation should be increased to 40% is also without merit. While indeed there are other properties that had higher depreciation, the board finds that, as the Town testified, depreciation rates are market derived and can vary depending on building type and location and, thus, not absolute for all types of properties based on their age. Again, this conclusion is supported by the Town's assessment-to-sale ratio study in Municipality Exhibit A which shows properties in the Taxpayers' neighborhood are, if anything, slightly underassessed. Said another way, to increase the depreciation on the Taxpayers' Properties, as they argued, would make the Taxpayers' assessments even more disproportionate relative to the 94.2% level of assessment within the community.

The board reviewed, both during the hearing and during its deliberations, the various sales submitted by the Taxpayers as part of the their contention the assessments were inconsistent. The board finds, in most instances, there were sufficient reasons for the discrepancies the Taxpayers pointed to. For example, a number of the assessment-record cards submitted were for lots that were split by the Hampton/Seabrook boundary. The Town's

assessment of the sliver or portion of the lot in Hampton was an estimate of a sliver's contributory value to a property's overall market value with the majority of the improvements and land being in Seabrook. The board found nothing in the Town's methodology that was inappropriate or not market related. Thus, the board finds the Taxpayers' more systemic arguments relative to the reassessment do not provide adequate bases for the board to grant the Taxpayers an abatement.

Last, the Taxpayers argued the 2003 reassessment lacked adequate documentation, including an appraisal manual and sales analysis. As the board explained at the hearing, such an argument is more properly brought under the board's general reassessment authority of RSA 71-B:16. However, the board would note that the evidence submitted by the Town in this hearing, including Municipality Exhibits A and B, provide detailed and sufficient market analyses to support the Taxpayers' assessed values. In fact, the board has, in many other instances, faulted towns for not providing such detailed sales analyses to support and document the reassessment and the individual appeals. Such market analyses contained in the Town's spreadsheets in Municipality Exhibits A and B are the cornerstone for determining the base rates for land and building values and for checking adjustments such as depreciation, size, etc. The board finds the Town's market analyses clearly indicate the Properties are not overassessed.

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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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: Edward H. and Dianne M. MacDonald, 53 Prescott Street, Reading, Massachusetts 01867, Taxpayers; and Chairman, Board of Selectmen, 100 Winnacunnet Road, Hampton, New Hampshire 03842.

Date: July 27, 2005

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Anne M. Stelmach, Clerk

Edward H. and Dianne M. MacDonald

v.

Town of Hampton

Docket No.: 20235-03PT

ORDER

This Order relates to the "Taxpayers'" Motion for Rehearing ("Motion") filed on August 24, 2005, which is denied for the following reasons.

The board's July 27, 2005 "Decision" found at page 3, "the Taxpayers' acquisition of the land interests of Lot 21 from the Town is not indicative of the lot's market value as of April 1, 2003." While the sale price of a property is one of the best indicators of a property's value if it is an arm's-length transaction (Appeal of Lakeshore Estates, 130 N.H., 504, 508 (1988)), the fact the Taxpayers owned the improvements on the land owned by the "Town" in and of itself raises the question as to whether any such transaction is at arm's length and necessarily indicative of market value. Further, for all the reasons stated in the Decision, the board found the consideration price which the Town and the Taxpayers agreed to was indicative of a market value earlier than the transfer date. Consequently the board did not err in its conclusion that the $125,500 price was not indicative of market value.

The Motion questioned the board's finding that "the market was appreciating at approximately 1% per month during the 2001 to 2003 time period." As referenced in the Decision, the finding was based on evidence submitted in Municipality's Exhibit B which included not only 2000 to 2002 sales but also a comparative analysis of the changes in the Town's equalization ratios for years 1999 through 2004.

The balance of the Motion's arguments relate to inconsistent methodology in the Town's application of depreciation and adjustments to other properties. The board has addressed those issues adequately in the Decision and found the Town was not inconsistent in its methodology given the market evidence submitted by the Town and the unique nature of some of the properties (some of the comparables submitted by the Taxpayers were for properties that were split by municipal boundaries). However, even if for argument purposes the board were to agree with the Taxpayers, which it does not, the Taxpayers failed to show the Town's methodology resulted in a disproportionate assessment. Verizon New England, Inc. v. City of Rochester, 151 N.H., 263, 272 (2004) (the supreme court has emphasized that "disproportionality, and not methodology, is the lynch pin in establishing entitlement to . . . abatement." citing Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003).

Consequently the board finds the Taxpayers did not show that "the board overlooked or misapprehended the facts or the law . . . in its Decision" (Tax 201.37(d)), and thus the Motion is denied.

Any appeal of the Decision must be by petition to the supreme court filed within thirty days of the date of this Order shown below. See RSA 541:6.

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 Order has this date been mailed, postage prepaid, to: Edward H. and Dianne M. MacDonald, 53 Prescott Street, Reading, Massachusetts 01867, Taxpayers; and Chairman, Board of Selectmen, 100 Winnacunnet Road, Hampton, New Hampshire 03842.

Date: September 21, 2005

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Anne M. Stelmach, Clerk