David and Joanne Pearl

v.

Town of Hooksett

Docket No.: 20399-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $265,200 (land $57,200; buildings $208,000) on Map 13, Lot 24, 79 Main Street, a single-family residence on a 26,136 square foot lot (the "Property"). 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) an appraisal completed by Brooks Real Estate Services ("Brooks Appraisal") estimated the market value of the Property at $235,000 as of February 7, 2003;

(2) although commissioned for a "refinancing" of the Property, the Brooks Appraisal used the same valuation standards, principles and methodology as any other appraisal, according to the licensed appraiser who prepared it;

(3) there are significant location differences between the Property and many of the sales of "ranch" and "raised ranch" style houses used by the Town because the Property is situated close to the road at the intersection of Main Street and Route 3, which has "constant," heavy and noisy truck and other traffic; and

(4) the evidence presented, including the assessment record cards for the three properties used in the February, 2003 appraisal and the three properties used in an earlier May, 2000 appraisal, indicate the Property was overassessed and is entitled to an abatement.

The Town argued the assessment was proper because:

(1) the Town completed a revaluation in 2003 performed by Vision Appraisal Technology ("Vision") and the level of assessment determined by the DRA was 91.7% for that year;

(2) Vision reviewed the Brooks Appraisal submitted by the Taxpayer during the informal review process in 2003 and found it had "errors" which did not support an abatement;

(3) the Town's assessor inspected the Property on March 23, 2004 and recommends a small abatement ($300) to $264,900 for several minor "date element adjustments";

(4) the Town's market analysis of raised ranch and ranch sales indicates market values supporting the assessment, as well as a higher rate of appreciation for such properties than reflected in the Brooks Appraisal;

(5) the Property has more living area than the comparables used in the Brooks Appraisal; and

(6) the assessment should be no lower than $264,900.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $252,200 (rounded), based upon a market value estimate of $275,000 and a level of assessment of 91.7% in tax year 2003. The appeal is therefore granted for the reasons presented below.

The board arrived at this market value estimate by using the three comparables presented in the Brooks Appraisal and making four adjustments based on the evidence presented. The board finds this appraisal, as adjusted, provides a reasonable basis for establishing a proportional assessment of the Property for tax year 2003.

First, the board adjusted the rate of appreciation from ".33%" to 1% per month. The Town presented strong evidence that properties were appreciating at the higher rate in this period and the Town used this rate in its own analysis.

Second, the board finds a favorable location adjustment for Comparable 1 (located at 13 Wimbledon Heights) is appropriate to reflect its more desirable features compared to the Property: a cul de sac in a subdivision and a larger lot size instead of very close proximity to a commercial corridor with considerable truck and other traffic as well as noise. The board finds the 3% economic obsolescence factor shown on the Property's assessment record card is insufficient to account for this significant factor. After considering the substantial difference in assessed land values ($71,500 compared to $57,200), the board concludes a location adjustment of $10,000 is reasonable for Comparable 1.

A third adjustment pertains to adjustments for "above grade" first floor living space. The Town emphasized the Property has considerably more living area than the three comparables used in the Brooks Appraisal (shown as 2,030 square feet compared to 1,248, 1,368 and 1,500

square feet, respectively[1]). In this regard, the board finds a value adjustment of $40 per square foot is reasonable, rather than the much higher ($80) or lower ($15) per square foot adjustments used by the Town and by Brooks, respectively.

A fourth adjustment involves corrections to the finished basement area adjustments. The board finds the finished basement, which contains a commercial work space, as well as a family room, fireplace and half-bath, and consists of 1,614 square feet, requires larger adjustments than reflected in the Brooks Appraisal. The board applied an adjustment of $20 per square foot for differences in the square footages reflected on the assessment record cards and used this calculation instead of the 'room count' approach followed in the Brooks Appraisal.

When these calculations are applied to the three comparables in the Brooks Appraisal, the indicated values as of April 1, 2003 are in the range of $271,700 to $277,100 and the board therefore concludes $275,000 is a reasonable estimate of the market value of the Property as of that date. Applying the Town's level of assessment for tax year 2003 indicates the assessment on the Property should be abated to $252,200 (rounded). The Town should make the appropriate modifications to the assessment record card to allocate this revised assessment between land and building components.

If the taxes have been paid, the amount paid on the value in excess of $252,200 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.

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[1] There are some slight differences between several of these figures and those shown on the corresponding assessment record cards; for example, the Town's most recent assessment record card lists the Property as having 2,057 square feet rather than 2,030 square feet on the first floor. The Brooks Appraisal, on page 1 of its Addendum, states the market would recognize value "where differences exceed 100 SF." For simplicity, and because the differences do not appear to be material, the board has used the figures shown in the Brooks Appraisal to compute the adjustments.

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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Paul B. Franklin, Chairman

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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: David and Joanne Pearl, 79 Main Street, Hooksett, NH 03106, Taxpayers; and Chairman, Town Council, Town of Hooksett, 16 Main Street, Hooksett, NH 03106.

Date: 5/1/06

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Anne M. Stelmach, Clerk