Fritz and Monja von Maxcy

v.

Town of Ossipee

Docket No.: 20402-03PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $3,296,028 (land $2,629,328 (including 11 acres in current-use); buildings $666,700) on Map 39, Lot 33, a 24 acre-lot on Lake Ossipee with a dwelling and 14 seasonal cottages (the "Property"). The Taxpayers also own, but are not appealing, three other lots with a combined total assessment of $480,163. 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) the Town arbitrarily raised the land assessment after the informal review following the 2003 town-wide revaluation;

(2) the assessment should not be based on the Property being condominiumized at some later date but rather on what was actually in place in 2003; and

(3) the Town revised the assessment based on the Taxpayers' asking price of $3,900,000, which should not be a basis for assessing.

The Town argued the assessment was proper because:

(1) the Property had been on the market for several years with an asking price of $3,900,000;

(2) the Property sold for $3,600,000 on October 15, 2005; and

(3) the revised assessment after the informal reviews was to recognize the contributory value of the15 different sites that existed for the various improvements.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be:

13 acres and 2936 feet of water frontage not in current use:……. $2,179,100

11 acres in current use:…… $228

building and improvement value:……. $666,700

Total abated value:……..... $2,846,028

This assessment is arrived at by adjusting the land assessment condition factor for the 15 building sites from the Town's 50% reduction to 40% to recognize the shared nature of the water and septic utilities. This assessed value also is based upon the board considering the best evidence of market value being the Taxpayers' sale of the Property on October 15, 2005 for

$3,600,000 and time adjusting the sale price to the April 1, 2003 assessment date at 1% per month based on the Town's testimony.

As testified to by both parties, this Property is singularly unique on Lake Ossipee given its extensive water frontage, acreage and development that has occurred during its history from a girl's camp use to the Taxpayers' current use as a residence and multiple rental cottages. Because of its uniqueness, no comparable sales exist on Lake Ossipee and, thus, the Taxpayers' sale of the Property in October 2005 for $3,600,000 is the best market evidence of value. When a sale is an arm's-length transaction, the sales price is one of the "best indications of the property's value." Appeal of Lake Shore Estates, 130 N.H. 504, 508 (1988). To relate the October 2005 sale price to an April 1, 2003 market value, an adjustment for market appreciation is necessary. The only evidence received relative to market appreciation was the 1% per month appreciation testified to by the Town that was utilized to trend sales for its subsequent 2005 assessment update. Based on the board's experience, we find the 1% per month rate is reasonable for this time period. Applying the 1% market appreciation results in an indicated market value of the Property on April 1, 2003 of $2,769,231 ($3,600,000 ÷ 1.30).

Using this calculated indicated market value as a guide, the board also considered the testimony of the Taxpayers as to the shared nature of the utilities for the various cottages on the Property and increased the adjustment to the condition factor to reflect that nature to arrive at the abated assessment. The abated assessment, which includes current-use assessment for 11 acres, is very similar to the calculated market value of the Taxpayers' sale price and is considered a reasonable assessment for tax year 2003.

If the taxes have been paid, the amount paid on the value in excess of $2,846,028 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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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: Fritz & Monja von Maxcy, 803 Longbow Trail, Osprey, FL 34229, Taxpayers; David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, representative for the Municipality; and Town of Ossipee, Chairman, Board of Selectmen, PO Box 67, Center Ossipee, NH 03814.

Date: September 7, 2006

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Anne M. Stelmach, Clerk