Moose Mountain Lodge Ltd. Partnership

v.

Town of Hanover

Docket No.: 20442-03PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2003 assessment of $535,400 (land $145,300; buildings $390,100) on Map 6, Lot 43/1, a 10-bedroom lodge on a 2.00 acre lot (the "Property"). The Taxpayer also owns, but did not appeal, Map 6, Lot 42/2, a 16.5 acre lot, assessed in current use at $1,100. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the view from the Property is excellent but not "panoramic" as stated on the assessment record card; and

(2) as a result, the view factor should be reduced from 100% to 75% resulting in an assessed value for the land of $128,600.

The Town argued the assessment was proper because:

(1) an assessment comparison between other lodge and bed and breakfast properties in Town, with adjustments for differences, indicate the Property is proportionally assessed;

(2) an analysis of singe-family homes sales indicates the median and mean sale price per square foot is $146 which is higher than the assessed value of the Property on a square foot basis;

(3) a paired sales analysis of four properties that sold in Town with views documents the view factor utilized by the Town during the 2003 reassessment; and

(4) the Property land condition factor had originally been 250 but the Town had abated it to 200; this is a composite factor of the view and the grandfathered right of being able to use the Property commercially.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry its burden of proving the assessment was disproportionate.

The Taxpayer submitted no evidence of market value. The basis for assessing is market value, See RSA 75:1, and thus to prove disproportionality, the Taxpayer needed to present evidence that the assessment was disproportionate relative to market value.

The Town's various analyses of sales of single-family homes and views (Municipality Exhibit A) indicate the Property is reasonably and proportionally assessed compared to market data. As the Town noted, the Property has one of the best views in Town and thus, the higher view factor is warranted to estimate its market value. Also, as the Town noted, the Property's use as a lodge or bed and breakfast is a grandfathered use and as such has additional value that other adjoining residential properties do not have. Lacking any market evidence to the contrary, the board concludes the Town's assessment is reasonable and market based, and thus the appeal is denied.

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: Kay and Peter Shumway, Moose Mountain Lodge, PO Box 272, Etna, NH 03750, Representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Hanover, PO Box 483, Hanover, NH 03755.

Date: June 23, 2006

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Anne M. Stelmach, Clerk