Susan K. Hillis 1995 Revocable Trust

v.

Town of Bethlehem

Docket No.: 20965-04PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2004 assessment of $229,000 (land $35,200; building $193,800) on Map 204/Lot 7, a single-family property on 1.20 acres at 60 Lewis Hill Road (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer's representative, Mr. Steven R. Buckler, sent an August 22, 2007 letter to the board indicating he would not be able to attend the hearing due to serving in the United States military in Iraq. The board treated the letter as a request for leave to not attend the

hearing. The board granted the request and proceeded with the hearing using the information provided by the Taxpayer in its appeal.

The Taxpayer argued the assessment was excessive because:

(1) an appraisal performed for estate purposes estimated the Property's September 13, 2004 market value to be $170,000;

(2) the Property does not have five bathrooms as indicated on the Town's assessment-record card;

(3) the kitchen is outdated;

(4) the house was designed and constructed as a summer residence making it impractical or expensive to occupy on a year-round basis; and

(5) a golf driving range being constructed nearby will negatively impact the Property's market value.

The Town offered a revised assessment of $218,700 and argued the revised assessment was proper because:

(1) the appraisal did not accurately describe the Property and therefore take into account all its features which affect its value;

(2) the Town visited the Property several months before the hearing, in the presence of Susan K. Hillis, to prepare for the appeal and the Property's description, story height and measurements appeared to be correct;

(3) the recommended revised assessment reduces the number of bathrooms in the house; and

(4) at the time of the inspection, the Town did not see any golf course construction taking place or receive any information regarding the golf course issue.

Board's Rulings

The board finds the proper assessment to be $200,400 for the reasons discussed below.

At the hearing, the board heard testimony from Mr. Steve Allen of Brett S. Purvis & Associates, Inc., the Town's contract assessor. After viewing the Property, Mr. Allen offered a revised assessment of $218,700 based on a revised building value of $182,800. The revised building value was determined after a review of the Property's unique plumbing situation. The Property has five bedrooms, each containing an individual sink. However, there are other rooms containing only a toilet, or a toilet with a bathtub. Mr. Allen testified there were approximately fifteen plumbing fixtures in the dwelling, including all of the sinks, toilets and tubs, as well as any kitchen plumbing fixtures. He further testified the revised building value resulted from a change in the way the Property's plumbing fixtures were listed on the assessment-record card reducing the number of bathrooms from five to three. The board has reviewed this methodology and also considered Mr. Buckler's August 22, 2005 letter outlining the unique nature of the Property and any issues he felt affected the Property's value.

Based on all the information received, the board finds an additional 10% adjustment for the dwelling's functional obsolescence should be applied to the house due to its unique construction design. The dwelling was originally constructed as a summer residence. The Taxpayer indicated, in addition to the unusual plumbing features, there is a furnace of insufficient size to heat the dwelling on a year-round basis, minimal, if any, insulation and an expansive amount of window glass area with no storm sash. The board finds each of these features, typically associated with an older home originally built for seasonal usage, would impact the value of the Property. Additionally, the Taxpayer would incur significant expenses to rectify these deficiencies in order for the Property to be considered an efficient, year-round

dwelling. The board finds the increase in the functional obsolescence depreciation factor would recognize the difference between the house, as it is currently being assessed as a year-round dwelling and the actual condition of the Property.

Further, the board reviewed the appraisal submitted by the Taxpayer in support of a lower assessed value. The board finds the appraisal, with some adjustments suggested by the Town's assessor, supports the board's ordered assessment. The Town testified the gross living area of the dwelling listed in the appraisal is not accurate. The dwelling has a finished attic and this space was not included in the appraiser's calculation when he adjusted for the differences in the gross living area between the Property and the comparable sales. The board finds the gross living area of the Property should be increased to account for this additional finished space. Further, the board finds the appraiser's $15 per square foot adjustment for differences in gross living area between the Property and the comparable sales is insufficient to reflect the contributory value of the additional area.[1] The board increased the adjustment to $30 per square foot in its calculations.

Mr. Allen testified the Property's quality of construction was better than average and the board finds an adjustment in the appraisal was warranted for this fact. If the Property's quality of construction is above average or good, than an adjustment to each of the comparable sales, which are listed to be of average quality is appropriate. The board concurs with the Town that the Property was a more than average quality summer home when it was originally constructed and some adjustments are warranted to reflect its unique nature and its condition on April 1,

[1] In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1. This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

2004. The board finds making all the previously discussed adjustments to the appraisal results in a market value estimate supportive of the ordered assessment.

The board will not comment further regarding the golf course issue raised in Mr. Buckler's letter for two reasons: 1) it appears to relate to events not relevant to the 2004 tax year, the year under appeal, and 2) the Town's assessor testified he saw no evidence relating to any golf course construction.

For all these reasons, the board finds the Taxpayer, through its submissions and supported by the suggested adjustments by the Town, carried its burden of proof and the appeal for abatement is granted.

If the taxes have been paid, the amount paid on the value in excess of $200,400 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, <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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Michele E. LeBrun, Member

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Douglas Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven R. Buckler, 60 Lewis Hill Road, Bethlehem, NH 03574, Taxpayer Representative; Steve Allen, Brett S. Purivs & Associates, Inc., 3 High Street, 2A PO Box 767, Sanbornville, NH 03872, Municipality Representative; and Chairman, Board of Selectmen, Town of Bethlehem, PO Box 189, Bethlehem, NH 03574.

Date: October 18, 2007

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Anne M. Stelmach, Clerk