

Lydia V. Scott 2002 Trust

v.

City of Dover

Docket Nos.: 21074-04PT/21943-05PT/22918-06PT

ORDER

The board has reviewed the “City’s” timely Motion for Rehearing (“Motion”) of the January 11, 2008 Decision granting the “Taxpayer” abatements for tax years 2004, 2005 and 2006, as well as the Taxpayer’s “Objection.” The Motion is denied for the reasons discussed below.

The Motion questions the abatement granted to the land not in current use (“NICU”) and also requests a clarification for “the value of the stairway improved in the assessed value of the property.” (According to the City’s records, the stairway is located on land in current use (“CU”).) The board will address each issue separately.

The first question regards the Taxpayer’s “burden of proof” and whether the board could disagree with certain of the “valuation theories espoused” by the Taxpayer’s representative and still grant an abatement. The board does not accept the City’s argument that such findings must somehow be inconsistent with each other. In seeking an abatement, a taxpayer is not constrained to present only one line of evidence or only one theory for estimating the value of his or her

property. To the contrary, a taxpayer can employ various types of evidence and theories and even rely on evidence presented by the municipality itself in order to meet its burden of proving an assessment is disproportional and should be abated. Here, the Taxpayer's representative (David Irwin) collected and presented considerable market and assessment data, see Taxpayer Exhibit No. 1, and also used the data to support a valuation theory where both land NICU and land in CU are owned. While not accepting this theory as the basis for granting the appeal, the board found the evidence presented, considered as a whole, supported abatements on the land NICU based on a finding of disproportionality.

In the Decision, the board found the Taxpayer had met the requisite burden of proof and finds no reason to change this conclusion. See, generally, Appeal of City of Nashua, 138 N.H. 261, 265 (1994) ("In arriving at findings of fact that . . . are within the parameters of the conflicting evidence submitted, the board merely employs its statutorily countenanced ability to utilize its 'experience, technical competence and specialized knowledge' in evaluating the evidence before it. See RSA 541-A:18, V(b)."); see also RSA 71-B:1.

The Motion further states the board erred as a matter of law in applying a negative 10% adjustment to the assessment of the land NICU, rather than either no adjustment or a lower percentage adjustment (based on the City's reading of two prior board decisions: Ford v. Town of Durham, BTLA Docket No. 19576-02PT and 20391-03PT (March 29, 2005), where a 10% adjustment was applied; and Maine v. Town of Deering, BTLA Docket No. 21111-04PT (June 13, 2007), where the board reduced the "condition factor" already applied by the municipality by a further 6.25%.) Nothing in the Decision is intended to suggest a municipality must follow a strict percentage approach of one amount or another to arrive at a proportional assessment. The actual dollar assessment under appeal, the methodology employed and other adjustments applied

are all factors which may have an impact on the percentage correction needed to achieve proportionality for any specific property. In other words, the actual percentage adjustment to be applied will invariably depend on the actual dollar assessment under appeal, rather than a mechanical and unwavering application of a higher or lower percentage.

The board recognizes factual differences exist in each of the cases compared by the City in the Motion (Ford, Maine and this appeal). Each set of fact variables requires separate and independent weighing and analysis to determine the appropriate adjustment to arrive at a proportional assessment. In this appeal, the board specifically considered the distance of the land NICU from the river, the limited view of the water from the land NICU, and the presence of a steep stairway leading to the water on the land in CU. See the photograph on p. 5 of Municipality Exhibit No. A.

The board weighed the market and other evidence presented by the parties before concluding abated assessments for the land NICU of \$302,100 (for tax years 2004 and 2005) and \$247,000 (for tax year 2006) were appropriate because this land should not be assessed on the same basis as waterfront land. On the Property, the land NICU is separated from the water by heavily wooded land in CU. The board was not obligated to follow either the City's methodology or adopt the Taxpayer's own land value theories, but could use its own experience and expertise to arrive at a proportional assessment for the land NICU. In this appeal, the board found the needed adjustment worked out to be 10% of the assessment under appeal.

The second issue raised by the City in the Motion regards the stairway. The Taxpayer conceded at the hearing there was a stairway to the waterfront. Technically, the stairway should affect the assessment by reducing the amount of land in CU and increasing the land NICU. At the hearing, however, no evidence of the market value for the stairway portion of the land in CU

was presented by either party. In the Decision (at p. 4), the board noted the City had made no separate adjustment for the stairway and this was a factor the board considered in applying the 10% adjustment to the land NICU to arrive at a proportional assessment for the Property as a whole.

Any appeal must be by petition to the supreme court filed within 30 days of the Clerk's date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David Irwin, Tax Choice Services, PO Box 1297, Hillsboro, NH 03244, Taxpayer Representative; and Chairman, City Council, City of Dover, 288 Central Avenue, Dover, NH 03820.

Date: 3/6/08

Anne M. Stelmach, Clerk