Lydia V. Scott 2002 Trust

v.

City of Dover

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

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" ad valorem assessments on Map M0001/Lot 000000, at 220 Back Road (the "Property"), an 11.7 acre parcel of land, with 10.7 acres in current use ("CU") and 1 acre not in current use ("NICU") with a single family residence, for three tax years: for tax year 2004 – $617,600 ($335,700 land NICU and $280,500 buildings, plus $1,400 CU, undisputed); for tax year 2005 – $632,100 ($335,700 land NICU and $295,000 buildings, plus $1,400 CU, undisputed); and for tax year 2006 – $550,800 ($274,500 land NICU and $274,900 buildings, plus $1,400 CU, undisputed).

For the reasons stated below, the appeal for abatement on the Property is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality.

The Taxpayer argued the assessments were excessive because:

(1) the Taxpayer purchased the entire parcel of land in 1999 at a competitive auction for $165,000;

(2) the purchase price "reasonably time trended to 4/1/04" indicates a value of $265,650 for the entire parcel;

(3) the land NICU (a 1 acre house lot) is 170 feet from the Cocheco River's waterfront and the house was constructed there so that the trees along the river frontage on the land in CU would not be disturbed;

(4) the Property has only 50 feet of road frontage and the house lot is accessed via a 1,000 foot rutted, unpaved drive;

(5) the Taxpayer's valuation model concludes the land NICU should be assessed based on a market value ranging from $88,725 to $98,022 based on the methods explained in Taxpayer Exhibit No. 1, adjusted by the levels of assessment in the Town for each tax year;

(6) the building is also overassessed because its estimated replacement cost is $198,758; and

(7) the Property is entitled to a substantial abatement.

The City argued the assessments were proper because:

(1)) the City does annual updates and is always trying to 'catch up' to waterfront land values, which have appreciated considerably;

(2) the City uses a consistent methodology in its CAMA system, using a 1 acre base rate and 200 feet of water frontage and then making appropriate adjustments where necessary;

(3) the Property has approximately 1,500 linear feet of waterfront on the Cocheco River and the land NICU is situated reasonably close to the waterfront and enjoys its amenities;

(4) the City applied a minus 10% adjustment for access to the land NICU and no further adjustments are warranted; and

(5) the City's building values are based on cost and market evidence consistently applied.

The parties agreed the levels of assessment in the City for tax years 2004, 2005 and 2006 were 95.2%, 89.0% and 94.9%, respectively (as measured by the median ratios calculated by the department of revenue administration).

Board's Rulings

The evidence presented in this case focuses on two general issues: 1) what is the proper assessed value for the 1 acre of land NICU?; and 2) what are the contributory values of the various improvements of the Property?

1 Acre NICU

The City, in Municipality Exhibit No. A at page 6, detailed its calculations for the land NICU. For tax year 2004 (and tax year 2005, when the land assessment did not change), the City assessed this primary acre at $133,000 plus $240,000 for the waterfront component ($1,200 per foot x 200 front feet base value), both adjusted by a minus 10% for the long "access" from the road; this resulted in assessments of $335,700 for tax years 2004 and 2005 for the land NICU ($133,000 + $240,000 = $373,000 x 0.9 = $335,700). See Municipality Exhibit No. A, pp. 3 and 6.

For tax year 2006, the City assessed the primary acre at $150,000, adjusted by a minus 10% for the long "access" from the road, to yield $135,000, and added $139,500 for the waterfront component to assesses the land NICU at $274,500 ($135,000 + $139,500). Id. Unfortunately, the City failed to explain (in this exhibit, on its assessment-record card or at the hearing) how the $139,500 amount was calculated. The board notes, however, that $139,500 is

90% of $155,000 (applying the minus 10% "access" adjustment). $155,000 may therefore reflect a reduced base value for the waterfront component in 2006 [using $775 (rather than $1,200) per square foot times 200 front feet)]. In other words, the City appears to have arrived at the $274,500 assessment for the land NICU as follows: $150,000 + $155,000 = $305,000 x 0.9 = $274,500.

An additional complication, acknowledged by the Taxpayer's representative at the hearing, is that 12 feet of the waterfront land NICU has been "disturbed" because of a wooden staircase down to the "high water mark" of the river that was built apparently to facilitate better use and enjoyment of the waterfront amenities accessible from the land NICU. (See photograph in Municipality Exhibit No. A, p. 5.). It is therefore not accurate to conclude the entire waterfront land is in CU as the parties have done in their respective analyses. Rather, the "disturbance" to waterfront land in CU should either be separately accounted for or more logically be included as a factor to consider in valuing the land NICU. See, e.g., Ford v. Town of Durham, BTLA Docket No. 19576-02PT and 20391-03PT (March 29, 2005) (value of dock and waterfront on adjoining lot (Lot 4) in current use, while not assessed to Lot 4, was captured in the value of the homesite on Lot 5 benefited by the water access and dock).

Turning to the central issue, and for the reasons explained below, the board finds the land NICU should be adjusted further by a minus 10% factor to result in a proportional assessment in each tax year. For tax years 2004 and 2005, the result (rounded) is $302,100 ($373,000 x .9 x .9). For tax year 2006, the result (rounded) is $247,000 ($305,000 x .9 x .9).

The board finds land NICU adjacent to waterfront land in CU held by the same owner can enjoy many, if not all, of the value enhancing attributes of waterfront land. Here, the land NICU is physically quite close to the waterfront and enjoys what the City describes as

"unfettered access" to the water and "all the rights of enjoyment of the view, location, passive recreation" and so forth. Municipality Exhibit No. A, p. 6. The board does not agree, however, that the land NICU is entirely equivalent, from a market perspective, to waterfront land and finds 10% is an appropriate discount to reflect this difference.

Both parties cite a number of prior appeals where the board has considered and ruled on similar arguments regarding proportional assessments when there is land in CU and land NICU. The board finds Ford v. Town of Durham, BTLA Docket No. 19576-02PT and 20391-03PT (March 29, 2005), cited above, to be a very close precedent for the adjustment appropriate in these appeals. In Ford, the land NICU (Lot 5) was separated from the waterfront (Great Bay) by a 10 – 30 feet strip on Lot 4, also owned by the same taxpayer). The board concluded a minus 10% (approximate) adjustment to the assessment of Lot 5 was appropriate, while recognizing "there is no technical or mechanical way of determining the proper value of the land NICU." Another precedent of some relevance is the board's recent decision in Maine v. Town of Deering, BTLA Docket No. 21111-04PT (June 13, 2007) where the board reduced the municipality's condition factor for land NICU by a further 6.25% (from 400 to 375) "to account for the control rights inherent in the current use land surrounding the NICU."[1] Both Ford and Maine cite Arnold v. Town of Francestown, BTLA Docket No. 08718-90PT (December 8, 1994) and other appeals where the board has recognized the general concept that land in CU has its market value "temporarily veiled" for taxation purposes but that adjacent land NICU may have

[1] Accord, Nelson v. Town of Deering, BTLA Docket No. 21259-04PT (June 13, 2007), a companion tax appeal decided on the same date as Maine.

its own value enhanced because of its proximity to this other land.[2] Cf. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (in arriving at a proper assessment, the municipality must look at all relevant factors).

The Taxpayer, as noted above, argues for much lower assessments based upon the methodology presented in Taxpayer Exhibit No. 2. While that methodology might have some plausibility in a municipality where there are a number of comparable sales of similar size and other attributes (11 – 15 acres, with 1 acre NICU, for example), the board finds this methodology is not appropriate for the heterogeneous land parcels that exist in the City on and near different bodies of water and their lack of sufficiently similar attributes, especially with respect to waterfront amenities such as distance, view, topography and so forth. A mechanical averaging of "waterfront and nonwaterfront land sales," see Taxpayer Exhibit No. 2, to estimate how much of the value should be attributed to the waterfront when its value is veiled by CU is an unreliable method of determining whether the land NICU assessments were disproportional in these appeals.

Improvement Values

The parties also disagree regarding improvement values by a substantial amount. The City's assessments on the improvements were $280,500 in tax year 2004, $295,000 in tax year 2005 and $274,900 in tax year 2006. Taxpayer Exhibit No. 2 estimates a much lower "replacement cost" ($198,758) for tax year 2004, but, as the City noted at the hearing, this

[2] The parties have also cited Lovett v. Town of Sutton, BTLA Docket No. 15100-94PT (September 16, 1996). In that appeal, the board rejected the taxpayer's argument that land NICU approximately 100 feet from the waterfront should be valued strictly as "rear land"; the board denied the appeal after considering the municipality's own application of a 50% reduction in the waterfront value and finding the taxpayer had failed to meet his burden of proving any greater abatement was warranted. Nothing in Lovett, however, suggests a blanket 50% reduction is either customary or appropriate in every situation involving waterfront land and adjacent land NICU.

calculation may be in error because it fails to account for "extreme" climate adjustments to the valuation estimates used (apparently derived from the Marshall Valuation Service publication).

The board finds the Taxpayer did not meet its burden of proving the improvements were disproportionally assessed. The photographs show an attractive, spacious house on two levels was built by the Taxpayer in 1999. The "new construction" cost is shown as $250,000 on the assessment-record cards and the Taxpayer did not dispute this figure. The house has four bedrooms and 2½ bathrooms, a recreation room and finished basement area and an attached garage. The comparable sales presented by the City in Municipality Exhibit No. A (at p. 15) for houses of similar and lesser size also support the assessment.

In summary, while the Taxpayer failed to meet its burden of proof on the valuation theories espoused for land NICU or its claim the house was disproportionately assessed, the board finds the Property is entitled to an abatement in each tax year, as follows: for tax year 2004, the assessment should be abated to $584,000 ($302,100 land NICU and $280,500 buildings, unchanged, plus $1,400 CU, undisputed); for tax year 2005, the assessment should be abated to $598,500 ($302,100 land NICU and $295,000 buildings, unchanged, plus $1,400 CU, undisputed); and for tax year 2006, the assessment should be abated to $523,300 ($247,000 land NICU and $274,900 buildings, unchanged, plus $1,400 CU, undisputed).

If the taxes have been paid, the amount paid on the total assessment of the Property in excess of $584,000 in tax year 2004, $598,500 in tax year 2005 and $523,300 in tax year 2006 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City 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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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: January 11, 2008

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Anne M. Stelmach, Clerk