Eric M. and Susan L. Eno

v.

Town of Exeter

Docket No.: 23099-06PT

DECISION

A hearing was scheduled in this appeal for February 25, 2009. The parties indicated they had reached a settlement for the 2006 year under appeal, however, they disagreed as to whether the assessment agreed upon for 2006 should apply in 2007 and jointly requested the board decide the issue as to the applicability of the assessment for 2007. The board noticed the parties the pending February 25, 2009 scheduled hearing date for the 2006 appeal would be used to hear the parties' arguments as to the applicability of the 2006 settlement to tax year 2007. In particular, the board directed the Town to provide a copy of the 2006 assessment-record card and be prepared to testify as to the statistical update process employed by the Town in tax year 2007.

Board's Rulings

Based on the record and the testimony presented at the February 25, 2009 limited hearing, the parties are generally in agreement as to the following facts. The 2006 settlement is predicated upon three corrections to the assessment-record card: (1) applying a negative 5% adjustment to the primary site value to acknowledge the lot's proximity to a gas pipeline easement; (2) deletion of a notation under the "outbuilding and yard items/building extra features" section for a second patio with an assessment of $7,200; and (3) application of a 5% depreciation factor to the primary

dwelling calculation to recognize the quality of the dwelling is above the neighborhood norm. These revisions resulted in the settled assessed value for 2006 of $676,900 (reduced from $719,700).

Based on the annual assessment update performed by the Town, the 2007 total assessment was $658,900. Because that assessment update for 2007 occurred before the parties reached a settlement agreement on the 2006 appeal, the 2007 assessment was not reflective of the three corrective items noted above.

However, as part of the Town's 2008 assessment update, the negative 5% gas pipeline easement adjustment was applied and the $7,200 patio value was removed. However, while the Town believed the 5% extra depreciation had been applied for the grade of the building being above the neighborhood norm, the 2008 assessment-record card did not indicate that adjustment had been applied.

The Town argued that because the Taxpayers had failed to file an abatement request and appeal for the 2007 tax year, the three corrective factors applied to the 2006 assessment should not be carried forward to 2007 based on its understanding and application of RSA 76:17-c, I. Conversely, the Taxpayers argued that because the corrective factors were factual, the Town should apply those factors in calculating the 2007 assessment.

RSA 76:17-c, I reads as follows:

> Whenever the board of tax and land appeals, pursuant to RSA 76:16-a, or the superior court, pursuant to RSA 76:17, grants an abatement on the grounds of an incorrect property assessment value, the selectmen or assessors shall thereafter use the correct assessment value, as found by the board or the court, in assessing subsequent taxes upon that property, until such time as they, in good faith, reappraise the property pursuant to RSA 75:8 due to changes in value, or until there is a general reassessment in the municipality.

Mr. DeVittori, the Town assessor, testified as to the analysis and methodology he employed in performing annual market sales analyses and re-calibration of assessment models. The board

finds the process employed by the Town resulted in a "good faith" reappraisal of the Property pursuant to RSA 75:8. Because of the Town's "good faith" reappraisal, normally a taxpayer, to preserve its appeal rights, would have to timely file an abatement and appeal for each tax year. However, because the basis of the 2006 settlement is factual and involved little or no judgment, the board finds it would be contrary to the purpose of RSA 76:17-c to preclude their application in a subsequent year despite the Taxpayers not having filed an abatement and appeal.

Further, assessments, to be proportional, must be based on the market value of a property's transmissible property rights (RSA 21:21and RSA 75:1). If those rights have not been accurately identified and valued by the municipality, it is likely the assessment is disproportionate. Thus it is proper for the factual corrections to be made in 2007.

This is not an issue of first impression before the board. The board has ruled similarly in Buchmiller 1991 Intervivos Trust v. City of Laconia, BTLA Docket No.: 18563-00PT (November 19, 2003) (Order attached). Because of the similarity of factual issues and certainly the legal application of RSA 76:17-c, the board incorporates by reference the findings of Buchmiller in this Decision. Here, as in the Buchmiller Order, the board finds the purpose for which RSA 76:17-c was enacted in 1992 was "to remedy the mischief of requiring taxpayers to file separate abatement applications and appeals every year based on the same issues already under appeal for prior tax years." See Appeal of Town of Newmarket, 140 N.H. 279, 283 (1995). Buchmiller at p. 5. While Buchmiller involved the enforcement in a subsequent year of a board's decision, here the parties' settlement is tantamount to a decision (see Tax 203.05(c)(1)). The board finds it is illogical and, indeed, contrary to the intent of RSA 76:17-c and RSA 75:1 to not apply the factual factors (indeed, "the same issues already under appeal for prior tax years" Newmarket at 283) that were subsequently agreed upon in the prior year tax appeal (2006) to 2007 especially when the Town did apply (or intended to apply) them to the 2008 tax year. The mere fact the Town performed a "good

faith" appraisal should not preclude the correction of the physical data matrix that underlies the annual sales analysis and re-calibration of assessment models performed by the Town. In addition to the annual physical listing and measuring of one third of the properties in Town, Mr. DeVittori stated he made corrections to properties based on building permits and when physical data errors were brought to his attention.

For all these reasons, the board finds the facts in this case warrant a similar correction for these factual errors in the 2007 tax year.

Applying these factual corrections to the 2007 assessment-record card provided by the Town results in a revised assessment for 2007 of $618,800 (land $179,500; extra features and outbuildings $8,600; and building value $430,700).

As the parties have agreed to be bound by the board's decision and waive their rights of appeal (see Attorney Morse's February 19, 2009 letter), the board's ruling in this matter for the 2007 tax year is final.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Alan H. Ganz, Esq., Ganz Law Office, PO Box 238, Seabrook, NH 03874, counsel for the Taxpayers; Chairman, Board of Selectmen, Town of Exeter, 10 Front Street, Exeter, NH 03833; and Lynn D. Morse, Esq., Morse Law Office, 14 Front Street, Exeter, NH 03833, counsel for the Town.

Date: June 24, 2009

_____
Melanie J. Ekstrom, Deputy Clerk