Thelma M. Engquist and Harvey L. Burlock

v.

Town of Bethlehem

Docket No.: 23128-06PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2006 total assessment of $231,100 on two lots (the "Property"): Map 205/Lot 230/2 - $200,500 (land $39,000; building $161,500), a single family home on a 0.66 acre lot ("Lot 2"); and Map 205/Lot 230/1 - $30,600 (land only), a vacant 0.46 acre lot ("Lot 1"). For the reasons stated below, the appeal for abatement on the Property is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the assessments on the Property were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers, represented by Andrew Smith, a real estate broker, argued the assessments were excessive because:

(1) two market analyses (Taxpayer Exhibit No. 1 and 2) he prepared in January, 2007 at the Taxpayers' request indicate the "recommended price" (market value) of each lot is as follows: Lot 2 -- $165,071; and Lot 1 -- $21,889; and

(2) an abatement should be granted on each lot to these amounts.

The Town argued the assessments were proper because:

(1) the Town did a full revaluation in 2004 and a statistical update in 2006;

(2) the two lots are adjacent, not across the street from each other (as stated by Mr. Smith, the Taxpayer's representative), and are well-situated at the end of Noyes Street, a very desirable location;

(3) the Taxpayers purchased Lot 1 in 2003 "for protection" (to keep it from being developed so that it will provide a buffer for Lot 2);

(4) the comparable sales (in Municipality Exhibit A and B) show the Properties were not disproportionally assessed; and

(5) the Taxpayers failed to meet their burden of proof.

The level of assessment in the Town was 99.5%, the median ratio computed by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the Property was disproportionately assessed in tax year 2006. The appeal is therefore denied.

Assessments must be based on market value. See RSA 75:1. The Taxpayers appear to recognize this and base their claim for abatement entirely on the market analyses prepared by Mr. Smith. These analyses were attached to the appeal document and are also marked as Taxpayer Exhibit No. 1 and 2. They are not appraisals, however, and fail to prove their claim that the Property, consisting of two contiguous lots, was disproportionally assessed.

Focusing first on Lot 2, the developed lot, both parties at the hearing (Mr. Smith and Michael Fournier of Brett Purvis and Associates, the Town's assessor) agreed that 22 Ivie Lane (Map 205, Lot 241) is the best comparable. 22 Ivie Lane was listed for $199,500 and sold after just eight days on the market (on December 12, 2005) for $192,500. In his analysis, Mr. Smith made nominal adjustments for several differences he noted,[1] but made no adjustment for the fact 22 Ivie Lane is a smaller lot (0.46 acres compared to 0.66 acres for Lot 2) and no time adjustment is shown in his analysis.

The board agrees with the Town's conclusion that Lot 2 is better situated (at the end of the street, buffered by Lot 1, which is vacant, on one side and no development on the other side, as shown on Tax Map 205 in Municipality Exhibit C) and could have more value in the market. The assessment-record cards indicate Lot 2 has an extra half-bath compared to 22 Ivie Lane. These facts support the Town's position that the indicated market value of Lot 2 was higher than the sale price of 22 Ivie Lane and the proportionality of the assessment.

[1] According to Mr. Smith's analysis (Taxpayer Exhibit No. 1, p. 4), 22 Ivie Lane has slightly more square footage (1,271 versus 1,248 square feet) and one less room (6 rather than 7 rooms). Upon further review, however, the board notes the data he presents is inconsistent with the information contained on the Town's assessment-record card for 22 Ivie Lane (part of Municipality Exhibit B). The card shows 22 Ivie Lane has 1,266 square feet of living area, compared to the 1,356 square feet for Lot 2 indicated on its card, and the same room count (3 bedrooms and a total of 5 rooms). There was no testimony by Mr. Smith that the information contained on the respective assessment-record cards is incorrect. A finding that Lot 2 has more living area and the same number of rooms on a much larger lot than 22 Ivie Lane, diminishes the credibility and weight that can be given to Mr. Smith's analysis and conclusion that an abatement is warranted.

On the evidence presented, and after noting the above differences, the board finds no basis for concluding the Taxpayers met their burden of proving Lot 2 was disproportionately assessed at $200,500. At this assessment, the indicated market value of $201,500, rounded ($200,500 divided by 99.5% level of assessment) is reasonable when compared to the selling price of 22 Ivie Lane ($192,500), as well as the other comparables in Taxpayer Exhibit No. 1 and the Town's comparables in Municipality Exhibit B.

From the evidence presented, there is even less of a basis for finding the Taxpayers met their burden of proving Lot 1 was disproportionately assessed. The parties' representatives (Mr. Smith and Mr. Fournier) agreed the best comparables to Lot 1 are also located on Noyes Street: two vacant, buildable lots in the middle of the block that both sold for their listed price of $24,500 on May 23, 2005, a very short time after being placed on the market.[2] As noted on the Town's assessment-record card (in Municipality Exhibit B), one of these vacant lots resold just four days later (on May 27, 2005) for $30,602, a fact Mr. Smith, did not mention in his presentation. This lot consists of 0.46 acres, making it a very close comparable to Lot 1 in size as well as location. Especially in light of this sale ten months before the assessment date, the board finds the Taxpayers failed to meet their burden of proving Lot 1 was disproportionally assessed at $30,600.

The board further notes that when a taxpayer owns more than one property subject to separate assessments in a municipality (such as Lots 1 and 2 in this appeal), an abatement can only be granted if the taxpayer's entire estate within the taxing jurisdiction is shown to be disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985):

[2] They sold either 1 day or 21 days after being listed, according to the data listed on several pages of Mr. Smith's analysis. Compare Taxpayer Exhibit No. 2, p. 3 ("DOM" - 1) and p. 7 ("Days on Market" - 21). There were no explanations given for these or other discrepancies in the data presented by Mr. Smith.

> When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the applicant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (Citations omitted).

While the Taxpayers' representative chose to present a separate analysis to estimate the value of each lot, the possibility certainly exists that these two adjoining lots, considered in the aggregate, may have a total market value in excess of their values as separate lots. The board need not examine this possibility further, however, because of its findings that the Taxpayers did not meet their burden of proving the assessment on either lot was disproportional.

For all of these reasons, 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, 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(g). 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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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Andrew Smith, Peabody & Smith, 383 Main Street, Franconia, NH 03580, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Bethlehem, PO Box 189, Bethlehem, NH 03574; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: May 13, 2009

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Anne M. Stelmach, Clerk