Nancy B. Ransom

v.

Town of Durham

Docket No.: 23236-06PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2006 abated assessment of $949,500 (land $383,900; building $565,600) on 22 Dear Meadow Road, Map 23/Lot 15, a single family waterfront home on 3.24 acres (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Town originally assessed the Property at $1,382,400 and then made some quality and other adjustments to reduce the assessment by $175,000 and then abated the assessment further to $949,500;

(2) although first listed for a high price ($1.4 million) in March, 2006, the Property was aggressively marketed by two brokerage firms and the asking price was dropped several times to $949,500;

(3) the Property did not sell until March, 2008 for a much lower price ($824,000);

(4) the Town failed to approve a recommendation from its own assessor (Robert Dix) to reduce the assessment to $824,000 for tax year 2007; and

(5) the assessment for tax year 2006 and subsequent years should be reduced to reflect the sale price of $824,000, which is the best indicator of its value.

The Town argued the assessment was proper because:

(1) the Property is a custom designed, waterfront home located in the best subdivision in the Town and was listed for sale in March, 2006 for a price of $1,400,000;

(2) after an inspection of the Property, the assessment was adjusted to take into account the lower quality of the kitchen and bathrooms and then abated further at the municipal level to $949,500 for tax year 2006;

(3) although the Town's assessor recommended a lower assessment (in response to a tax year 2007 abatement request), this recommendation was not accepted by the Town selectmen and they have the sole authority to set assessments;

(4) it is very hard to gauge market values for high end properties in the Town and asking or selling prices are not necessarily good indicators because, on the one hand, asking prices are

sometimes inflated and, on the other, speculative buyers sometimes purchase these properties at a discounted price and then promptly remarket ("flip") them for a much higher price, as shown by the sales of another property, 571 Bay Road; and

(5) the Taxpayer failed to meet its burden of proving disproportionality.

The parties agreed the level of assessment was 86.8% for tax year 2006.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality. The appeal is therefore denied.

Assessments must be based on market value. RSA 75:1. The Taxpayer did not prepare or present an appraisal or any comparable sales evidence, but instead emphasized the Property was on the market for approximately two years with declining asking prices before it was ultimately sold. Over time, the asking price fell from $1.4 million in March, 2006, to $1.325 million in May, 2006 to $1.15 million in October, 2006 and then to $949,900 sometime later (probably in 2007), before selling for $824,000 in March, 2008. See Taxpayer Exhibit No. 1.

While the sale price (as distinct from asking prices) can be one indicator of market value, the focus should be on the value of the Property as of the assessment date approximately two years earlier on April 1, 2006. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The property next door, 24 Deer Meadow, one of the Town's comparables in Municipality Exhibit A, sold in August, 2005 for $1,339,000. The neighboring property is also a contemporary style home and is smaller in size (4,157 square feet of living area, as shown in

Municipality Exhibit No. A, compared to 5,086 square feet for the Property), albeit on a somewhat larger lot (4.24 acres compared to 3.24 acres). This sale may have influenced the initial asking price for the Property in 2006. The board also notes the later sale of 21 Deer Meadow for $1,250,000 in February, 2007, which supports the representation of the Town's assessor Robert Dix, that the Property is in the highest value neighborhood in the Town.

The board has reviewed the statements of the Taxpayer's representative, Christopher Snow, that the Property had been "aggressively" marketed by the two brokers. Mr. Snow did not mention, however, whether any formal or informal offers to purchase the Property had been received and rejected (at a price lower than the asking price, for example) prior to the March, 2008 sale date. In addition, and in the board's experience, setting an overly high asking price can discourage buyers from making offers and discourage sellers from accepting what, in hindsight due to evolving market conditions, might be a reasonable price. By the same token, successful brokers are motivated to sell property based on their knowledge of current market conditions and demand, not set overly high asking prices that cannot lead to a real estate commission within a reasonable period of time. The fact the brokers agreed to market the property initially for $1.4 million around the time of the assessment may be some evidence that its market value, in their estimation at least, was reasonably close to this amount.

Applying the level of assessment for tax year 2006, the indicated value of the Property as of the assessment date was approximately $1,094,000 ($949,500 assessed value divided by 86.8% level of assessment). See Taxpayer Exhibit No. 1. This indicated value is below the prices at which the Property was marketed throughout 2006. Based on the evidence presented, the board cannot rule out as a reasonable conclusion that the market value of the Property was at least this high as of the assessment date. This conclusion is consistent with the possibility the

value may have subsequently fallen significantly due to changes in market conditions over the ensuing two years before the Property was finally sold. In any event, the board finds the Taxpayer failed to meet its burden of proving a lower market value as of the assessment date (April 1, 2006) to support a further abatement.

At the hearing, the Town's assessor candidly acknowledged his feeling that estimating market values for high end properties was hazardous (what he described as a "black hole"). Mr. Dix gave as an example another property, 571 Bay Road. This property sold in March, 2007 for $600,000 (when it had been assessed for $1,001,000) and, after some "cosmetic" renovations costing about $70,000 completed without a building permit, was "put back on the market with an asking price of $1,250,000." See Municipality Exhibit A. This history reflects his view that one sale price, particularly on a high end property in a volatile market, may not be reflective of market value and what is or is not a proportional assessment.

Turning to another Taxpayer argument, the board can place no weight on Mr. Dix's recommendation to the Town selectmen that a further abatement be granted on the Property for tax year 2007. This recommendation did not pertain to tax year 2006, the year under appeal, and, in any event, was not accepted by the selectmen. While an assessor can give advice and make recommendations, it is the selectmen, not the assessor, who have the responsibility for appraising all taxable property in the Town at its full and true value. See RSA 75:1. Nothing requires or obligates them to approve any recommendation made by staff, including the assessor. The board further notes that even if the Town used a flawed methodology (such as abating the tax year 2006 assessment to approximately the lowered asking price during the next year), the burden remains with the Taxpayer to prove disproportionality--making a showing that "property is assessed at a higher percentage of fair market value than the percentage at which property is

generally assessed in the town." Porter v. Town of Sanbornton, 150 N.H. 363, 368, 370 (even demonstrating a "flawed" or "poor" assessment methodology is not sufficient to meet this burden).

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: Christopher Snow, Property Tax Advisors, Inc., 16 Pierce Street, Suite 3, Dover, NH 03820, representative for the Taxpayer; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: October 21, 2008

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Anne M. Stelmach, Clerk