

Robert Webb

v.

Town of Brentwood

Docket No.: 24030-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$152,342 [land \$131,642 (\$129,200 for the 80,000 square feet of land not in current use and \$2,442 for the 18.463 acres of land assessed in current use); building \$20,700] on Map 212/Lot 021, a mobile home on 20.3 acres (the “Property”). The Taxpayer also owns, but is not appealing, a 0.98 acre lot with a single family home assessed at \$265,200 on Map 212/Lot 014 which the parties stipulated is not in dispute and therefore not part of this appeal. For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the 10' by 47' mobile home on the Property is more than 50 years old;
- (2) mobile homes of this vintage do not carry a “HUD” tag and cannot be moved from town to town;
- (3) lending institutions will not give a mortgage on a mobile home of this age;
- (4) the Property was purchased for protection, thus, the \$100,000 purchase price did not reflect the Property’s market value; and
- (5) an independent appraisal prepared by Michael Daigneault of Rockingham Appraisal Service, LLC (the “Daigneault Appraisal”) (Taxpayer Exhibit No. 1) determined the Property’s market value to be \$86,000 on April 1, 2008.

The Town argued the assessment should be abated based on a market value finding of \$120,000 and the abated assessment was proper because:

- (1) an appraisal (Municipality Exhibit A), prepared by the Town’s assessor, James Michaud, (the “Michaud Appraisal”) using comparable sales of similar properties indicates the Property’s market value was \$120,000 on April 1, 2008; and
- (2) Mr. Daigneault did not attend the hearing and, therefore, was not available for questions regarding his report.

The parties stipulated the Town’s median level of assessment was 103.9% for the 2008 tax year as determined by the department of revenue administration (the “DRA”).

Board’s Rulings

Based on the evidence and testimony received, the board finds the Property’s assessment to be \$91,725. The assessment was determined through the following calculations. First, the board estimated the Property’s April 1, 2008 market value to be \$120,000 based on a review of the two appraisals. Second, the \$120,000 market value finding was multiplied by the Town’s

103.9% stipulated level of assessment in 2008 to determine the Property's total ad valorem assessed value of \$124,700. Third, the ad valorem value of the land in current use (\$35,397) was subtracted from the total ad valorem value ($\$124,700 - \$35,397 = \$89,283$) to determine the value of the land not in current use and any buildings. Last, to determine the total taxable assessment, the board added the current use assessed values for the land in current use (\$45 and \$2,397) to the assessed value for the buildings and land not in current use (\$89,283) to arrive at \$91,725.

The Taxpayer's primary argument that an abatement is warranted is that the Town's \$16,100 assessment placed on the 50+ year old mobile home on the Property is excessive.

This board's jurisdiction is entirely statutory. The Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) requires the board to consider the Taxpayers' "entire estate" when determining whether an abatement is warranted on any portion of the estate. Further, in the Appeal of Walsh, 156 N.H. 347, 356 (2007), the court found:

[E]ven if the board could have addressed the land assessments separately, it would still have needed to examine those assessments in conjunction with the buildings' assessments to determine whether the taxpayers were being disproportionately taxed. While the taxpayers attempt to split the assessments into land and buildings, the board correctly found that "[a]ny property tax assessment appeal based on disproportionality requires a review of the market value of the property in its entirety (*i.e.*, land and buildings) and the Town's level of assessment.

As noted earlier, the Taxpayer's primary argument was relative to the mobile home value portion of the assessment. However, even if the board were to find (which it does not for the reasons discussed later in this Decision) the mobile home's assessment was excessive, the Taxpayer still has the burden to show the aggregate value of the entire estate was disproportionately assessed. In the residential real estate market, properties are transferred in their entirety as a single economic unit. When a residential property is for sale, there is one offering price for the whole

property rather than separate asking prices for the individual components such as for the land and buildings.

Assessments must be based on market value. See RSA 75:1. The board received two opinions of the Property's market value during the hearing, one from the Taxpayer, the Daigneault Appraisal, and one from the Town, the Michaud Appraisal. The Daigneault Appraisal indicated the Property's April 1, 2008 market value to be \$86,000. Mr. Daigneault, did not attend the hearing and was unavailable for questioning or cross-examination; however, the board has given the appraisal and the comparable sales utilized some weight in determining its market value estimate. The Town's appraisal was prepared by the Town's assessing agent, James Michaud, who estimated the Property's market value to be \$120,000 on April 1, 2008. The Town testified the Property was a difficult one to appraise as there are few older mobile homes that are located on their own individual plot of land. The Town's appraiser found four sales of individual mobile homes located on their own residential lots and compared them to the Property making adjustments for dissimilarities between the Property and the comparable sales. After a thorough review of the appraisals, the board gives weight to both appraisals in determining the Property's market value on April 1, 2008.

The Town determined the Property's highest and best use was as improved compared to the Taxpayer's appraiser who determined the Property was, in essence, a single family residential building lot. The board finds the fact the Taxpayer is currently renting the Property for \$200.00 a week, which equates to more than \$10,000 in rental income per year, is an indication the improvements on the Property, the mobile home, garage and shed, add value and the resulting highest and best use for the Property would be as improved on the April 1, 2008 assessment date.

As previously stated, the Daigneault Appraisal determined the Property's highest and best use to be a vacant residential lot and considered the mobile home on the Property to have only a nominal (\$1,000) contributory value. The board finds the Property's mobile home adds significantly more value, based on its income generating history, than the Taxpayer's appraiser has given it. The board further notes that if the mobile home adjustment is removed from the Daigneault Appraisal's sales grid on page 23 of Taxpayer Exhibit No. 1, the resulting values are very close to the \$100,000 purchase price the Taxpayer paid for the Property in March 2008. The Taxpayer testified he had a verbal right of first refusal to purchase the Property with the heirs to the estate and the Property was purchased for "protection" because the Taxpayer owns an abutting property on which he operates a "certified green" salvage yard. The Town testified the DRA does not consider "estate" sales to be qualified, arm's length transactions and does not include them in its equalization studies. Nonetheless, the board finds the Daigneault Appraisal, with some adjustment, gives some indication of what is the lower limit of the range of value for the Property.

Therefore, following the calculations detailed earlier in this decision, the board finds the Property's market value as of April 1, 2008 to be \$120,000 and thus its assessed value to be \$91,725.

If the taxes have been paid, the amount paid on the value in excess of \$91,725 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert Webb, 37 Middle Road, Brentwood, NH 03833, Taxpayer; Chairman, Board of Selectmen, Town of Brentwood, 1 Dalton Rd., Brentwood, NH 03833; and Jim Michaud, Century Consulting, 11 Laurel Road, Hooksett, NH 03106, representative for the Town.

Date: August 9, 2010

Anne M. Stelmach, Clerk