

Robert A. Mykytiuk

v.

Town of Sanbornton

Docket No.: 24173-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$221,000 (land \$78,100; building \$142,900) on Map 03/Lot 181, a single family home on 2.47 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted to the recommended assessment of \$199,500.

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 argued the assessment was excessive because:

(1) the Property was purchased with the intent of renovating and selling; at the time of the purchase, the Taxpayer was not aware the only other residence on the road (25 Contentment Road) had a private trucking company operations;

(2) despite initially not having an occupancy permit or other permission to operate a trucking business, the 25 Contentment Road property ultimately obtained an occupancy permit to allow “heavy equipment” be parked on the property after an appeal to the Town zoning board of adjustment; and

(3) the Town’s recommended value of \$199,500 does not sufficiently recognize the impact of the adjoining trucking business and further adjustment is warranted to result in an assessment of approximately \$165,000.

The Town made a good faith offer of \$199,500 (10% economic adjustment on building and home site) to account for the private trucking operation and argued the recommended assessment was proper because:

(1) the Taxpayer has provided no evidence of value from any realtors or other market experts to warrant a greater adjustment; and

(2) the recommended value of \$199,500 is not unreasonable given the Property was listed for \$214,000 in February, 2009.

Board’s Rulings

Based on the evidence, the board finds the recommended assessment of \$199,500 is proper for the following reasons.

The Taxpayer provided sufficient evidence for the board to conclude that the existing truck storage use of the adjoining property is a factor the market would likely consider. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (all factors affecting market value must be considered by the municipality). Given the uniqueness of the situation, as the Taxpayer noted, no definitive market evidence was submitted from which to determine an appropriate adjustment for the economic obsolescence. The Taxpayer’s assertion was based on discussion with several

realtors that indicated a market reduction of 10% to 25% would be warranted. The Town testified that its 10% adjustment was drawn from experience that the value of a property in another municipality adjacent to a landfill was negatively impacted by approximately 10%. The board finds the Town's 10% economic obsolescence is reasonable and results in a value measurably less than the Taxpayer's asking price of \$214,000 in 2009. The Taxpayer's proposed 25% adjustment, which would result in an assessed value of approximately \$165,000, appears excessive based on the Taxpayer's asking price and also the several sales of comparable properties submitted by the Town including 890 Sanborn Road, a comparable listed by the Taxpayer in his appeal document. Said another way, there is insufficient evidentiary or market support for an abatement of such magnitude and thus lacking any more definitive market evidence, the Town's recommended assessment is reasonable. In weighing evidence to arrive at a proportional assessment, "judgment is the touchstone." See, e.g., Appeal of Public Service Co. of New Hampshire, 124 N.H. 479, 484 (1984).

If the taxes have been paid, the amount paid on the value in excess of \$199,500 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.

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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Robert A. Mykytiuk, PO Box 842, Moultonborough, NH 03254, Taxpayer; Chairman, Board of Selectmen, Town of Sanbornton, PO Box 124, Sanbornton, NH 03269; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 6/21/10

Anne M. Stelmach, Clerk