Andrew L. and Karen Goldstein

v.

Town of North Hampton

Docket No.: 24345-08PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2008 assessment of $7,217,200 (land $391,600; improvements $6,825,600) on Map 2/Lot 36, 10 Runnymede Drive, a 15.70 acre lot improved with a single family home (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was 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 Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) as detailed in the "Memorandum" filed at the hearing, the Property was purchased in 2004 for $1.6 million when it consisted of a 17 year old contemporary style home containing 8,700 square feet, but they engaged in extensive renovation work, demolishing a portion of the existing buildings and then rebuilding a 15,000 square foot colonial on the Property;

(2) the extensive renovation was only partially completed (60 – 70%) as of the assessment date for this tax year (April 1, 2008);

(3) the millions of dollars of work was undertaken for the Taxpayers' own use and enjoyment, since they intended to live on the Property for the rest of their lives, and not necessarily to increase the market value;

(4) in late 2009, however, and because of family considerations (children who now lived out West), the Taxpayers decided to sell the Property in order to relocate on a year-round basis and they then entered into an exclusive sales listing with a real estate broker in January, 2010 (see Tab 4 of Taxpayer Exhibit No. 1);

(5) no inquiries or offers were received at the original listing price ($11.5 million) and two price reductions (to $9.8 million and $7.9 million) were effected in May, 2010, without any offers or significant buyer interest and the Taxpayers spent between $25,000 to $30,000 to market the Property (through Christie's Great Estates);

(6) by August, 2010, because of an absence of inquiries or offers, the Taxpayers decided to sell the Property through a "Grand Estates" absolute auction and spent an additional $60,000 to $70,000 to advertise and market the auction of the Property;

(7) the Property sold through this auction for $3,850,000 (plus a 7 ½ percent "buyer's premium") with additional personal property; and

(8) this sale to the "Broom Trust" for a cash price of $3,850,000 in December, 2010 supports an abatement in the assessment for tax year 2008 to this value, adjusted by the level of assessment.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in 2008 (by Vision Appraisal Company);

(2) the Taxpayers told Vision at the time of this revaluation in 2008 that they had spent approximately $7 million on the Property;

(3) the Taxpayers later provided information to the Town showing the total costs of acquiring the Property and further construction increased from $11,389,922 as of April 15, 2008 to $16,849,036 after December 31, 2009 when the construction phase was completed;

(4) the Taxpayers testified the Property was built with high quality and finish standards and many luxury improvements including a rainwater irrigation system (through underground storage tanks) and an advanced geothermal heating system (with no use of oil or gas);

(5) the 75% complete estimate on the assessment-record card reflects building permits issued as of that time and the state of completion of that work;

(6) the Property is a limited market property and the best approach to value such property is the cost approach, especially when it is still under construction as it was in tax year 2008;

(7) the 2010 auction price is not reflective of the Property's market value in tax year 2008, because the Taxpayers may not have been typically motivated to sell, high value properties take longer to sell and the Property was not placed on the market for a long enough time as of the assessment date; and

(8) the appeal should be dismissed because the Taxpayers have failed to prove disproportionality for the reasons stated in the Town's oral motion to dismiss made at the close of the Taxpayers' presentation.

The parties agreed the level of assessment was 97.1% in tax year 2008, the median ratio calculated by the department of revenue administration.

Board's Rulings

The board deferred ruling on the Town's motion to dismiss presented orally at the conclusion of the Taxpayers' presentation. In light of the additional relevant evidence presented by the Town on the issue of proportionality, the board finds it is more reasonable to consider the evidence as a whole and decide the appeal on the merits rather than grant the Town's motion to dismiss. Based on the evidence, the board finds the Taxpayers failed to carry their burden to prove disproportionality and thus the appeal is denied.

Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). In order to prevail in a tax abatement appeal, the Taxpayers have the burden of proving the market value of the Property as of the assessment date was less than the assessed value adjusted by the level of assessment in the Town (97.1%). The board has the discretion to evaluate and determine whether any piece of evidence is indicative of market value. Cf., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980).

The Taxpayers, through their attorney, emphasized the Property was first placed on the market in January, 2010 and did not sell until December, 2010 in an absolute auction for $3,850,000. They argued this price was an indicator of the market value of the Property as of the assessment date (April 1, 2008) and should result in a tax abatement. The board disagrees.

First, the sale occurred some 21 months after the assessment date, when it is likely real estate prices were falling. The Taxpayers presented no appraisal or other credible evidence to support their contention that prices for this type of property were "stable" in this period. While

the board considered the unsupported comments of one of their witnesses to this effect, there is quantitative evidence to the contrary. For example, one indicator that real estate prices were generally falling between 2008 and 2010 is the increase in the Town's levels of assessment, measured by the median ratios, from 97.1% in 2008 to 104.5% in 2009 and 108.6% in 2010.

Second, a property of this size and quality will typically require an active marketing period greater than one year because it is attractive only to a limited number of qualified buyers who may not be local, but rather are across the country and perhaps the world. The Taxpayers listed the Property with a broker for only a much shorter period of time (January to July, 2010) and then explored another avenue, the auction. There is no evidence to indicate the Property might not have sold for a price supportive of the assessed value if it had been marketed consistently and actively through a real estate broker for a more reasonable period of time. Further, the original asking price ($11.5 million) is some indication of what the Taxpayers (and perhaps their broker) thought the Property was worth. In general, a higher price will require a longer marketing period and greater efforts to find a qualified and willing buyer.

Third, the December, 2010 price they rely on was obtained at an auction and for "cash." All other things being equal, such conditions of sale are likely to result in a lower price than a more conventional sale handled by real estate brokers with standard mortgage financing and other contingencies to protect the buyer. For these reasons and perhaps others, an auction price is not necessarily a reliable indicator of market value. See, e.g., Society Hill, 139 N.H. at 255-56 (party proffering sale prices from an auction has burden of proving prices reflect market value; based on evidence presented, trial court correctly concluded "market auction prices were not indicative of the fair market value of the properties sold"); cited in Ferwerda Development Co., Inc. v. Town of Fremont, BTLA Docket No. 24226-08PT (September 2, 2010).

The Town submitted photographs of the Property showing some of the extensive renovations undertaken by the Taxpayers and the cost information they provided to the Town. The Taxpayers acknowledge spending a total of $11,389,922 on the Property by "4/15/2008" and $16,849,036 by the time the renovations were "Completed (after "12/31/09"). These figures include the $1,600,000 purchase price. While cost does not necessarily equal value, in every instance, the board finds these figures lend some support to the Town's position that the Property was not overassessed in tax year 2008 when its state of completion reflected by the building permits (75%) is taken into account.

The Town also included the assessment-record cards for three other high-value properties in Municipality Exhibit A and assessed them with the same methodology used in assessing the Property. This is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all of these reasons, the board finds the Taxpayers failed to prove the Property was disproportionally assessed in tax year 2008. The appeal is therefore denied.

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

_____
Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Thomas M. Keane, Esq., Keane & MacDonald, 1000 Market Street - Suite 202, PO Box 477, Portsmouth, NH 03802-0477, counsel for the Taxpayers; Chairman, Board of Selectmen, Town of North Hampton, PO Box 710, North Hampton, NH 03862; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: 7/13/11

_____
Anne M. Stelmach, Clerk