

Matthew and Lynne Blunt Revocable Trust

v.

Town of East Kingston

Docket No.: 24752-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$465,471 on Map 17/Lot 02-07 (the “Property”), a single family home on 31.07, 29.07 acres of which are subject to a recorded conservation easement. The Taxpayer also owns, but is not appealing, Map 17/Lot 02-02, an 18 acre lot in current use. For the reasons stated below, the appeal for abatement on the Property 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-; 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 should be abated further because:

- (1) an appraisal prepared by Patricia Kearney of Windham Real Property Appraisals, LLC (the “Kearney Appraisal,” Taxpayer Exhibit No. 1) estimates the Property’s market value to be \$380,000 as of December 14, 2010
- (2) the “110” condition factor applied to the 2-acre site value should be “100” because three other properties with similar “pond” views or views of other value enhancing features do not have the +10% adjustment applied to them, as shown in Taxpayer Exhibit No. 2;
- (3) the Town’s assessment of the living area above the garage is overstated because the living area can only be used as a residence for the Taxpayers’ in-laws, but not for anyone else after their demise; and
- (4) the assessment should be further abated based on the market value estimate in the Kearney Appraisal.

The Town argued the revised assessment was proper because:

- (1) in response to the abatement request, the Town’s assessor inspected the Property and corrected certain factual data errors resulting in an abated assessment of \$465,471, as shown on the revised assessment-record card (Municipality Exhibit B) ;
- (2) the Town lowered the condition factor from “125” to “110” and this is consistent with at least five other properties with pond views or similar amenities, as shown in Municipality Exhibit C:
- (3) the Kearney Appraisal is entitled to no weight because the adjustments to the comparable sales for the Property’s three car garage with the in-law living area are “much too low” and Ms. Kearney was not present at the hearing and available for cross examination; and
- (4) a “Sales Comparison” prepared by the Town’s assessor (Municipality Exhibit A) indicates the revised assessment is proper and no further abatement is warranted.

The parties agreed the level of assessment in the Town was 99.6%, the median ratio calculated by the department of revenue administration.

At the end of the October 19, 2011 hearing, the board left the record open for twenty (20) days to allow each party to submit additional documentary evidence pertaining to the pond on the Property and the living area over the garage. The Taxpayer submitted some documentation on November 4, 2011, including a "Fire Pond Access Easement" granted to the Town in October, 2005.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving disproportionality and that the Property was entitled to a further abatement. The appeal is therefore denied.

The Taxpayer placed its primary reliance on the Kearney Appraisal, but the board can give this appraisal no meaningful weight as evidence of disproportionality. The Kearney Appraisal values the Property as of December, 2010, one year and nine months after the assessment date (April 1, 2009) and consists of only the three pages contained in Taxpayer Exhibit No. 1. (The Kearney Appraisal references an "attached addenda," but this was not presented as evidence at the hearing.)

The Kearney Appraisal relies on three 2010 sales, two in the Town and one from Nottingham (making no location adjustment for this difference), and contains no explanation of the stated adjustments made, including a negative time adjustment (indicating prices were falling between July, 2010 and December, 2010, at least). If sale prices were adjusted back to the assessment date, a positive time adjustment would presumably be necessary for all three sales, since they all occurred after the assessment date (April 1, 2009).

The board was unable to reconcile the smaller living area for the Property stated in the Kearney Appraisal (2,094 square feet) with the larger amount of area shown on the assessment-record card (2,971 square feet for the main house and, in addition, the 936 square feet of living area above the garage). The Kearney Appraisal also makes no discernible adjustment for the value enhancing feature of the extra land associated with the Property (listed on this appraisal as 28.87 “excess” acres with a conservation easement not mentioned in the appraisal).

The preparer of this appraisal, Patricia Kearney, did not attend the hearing. She therefore was not available to answer questions regarding her work to shed some light on the basis of her estimated value.

If all of these appraisal deficiencies were properly adjusted and corrected for, there is little reason to conclude an appraisal of the Property as of the assessment date would not be generally supportive of the Town’s abated assessed value (\$465,471 adjusted by 99.6% level of assessment = \$467,300 (rounded).)

The Town presented an analysis (Municipality Exhibit C) using six comparable sales in the Town. While the Town may have overstated the contributory value of the 936 square feet of living area above the garage to some degree (estimated at \$60,800 with 20% depreciation applied by the Town), the board finds this analysis yields a market value range that is supportive of the abated value determined by the Town.

The variance granted by the Town in March, 1989 (Taxpayer Exhibit No. 4) allowed for the development of the living area as an “in-law” apartment above a three-car garage, but imposed the condition that this area could not be used “as a residence” after “the deaths” of the in-laws. It is not reasonable to assume, however, that this amount of additional living area does not add contributory value to the Property as a whole. In addition, no evidence was presented

regarding whether the Taxpayer could apply for a modification of the variance to allow its use as a separate residence if needed at some point in the future due to changed circumstances.

Finally, the board finds no basis for finding the Town erred in assigning a “110” condition factor to the land. While the Taxpayer did present the assessment-record cards for three properties with pond views where the condition factor is shown as “100” or less (see Taxpayer Exhibit No. 2), they board could draw no reliable conclusion from these cards, especially in light of the assessment-record cards for five other properties presented by the Town (Municipality Exhibit No. C) with pond influences where the condition factor was “110,” as it is for the Property.

For all of these reasons, the appeal for further abatement is 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Matthew and Lynne Blunt Revocable Trust, 22 Joslin Road, Exeter, NH 03833, Taxpayer; Chairman, Board of Selectmen, Town of East Kingston, 24 Depot Road, East Kingston, NH 03827; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 16, 2011

Anne M. Stelmach, Clerk