Glenn and Rebecca Mitchell

v.

Town of Haverhill

Docket Nos.: 24807-09PT/25521-10PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2009 and 2010 assessment of $93,800 (land only) on Map 402/Lot 126.001, 4720 Dartmouth College Highway (the "Property"), a 0.82 acre undeveloped lot. (The Taxpayers also own, but are not appealing, an adjacent lot, Map 402, Lot 126, a mobile home park assessed at $502,400 and the parties agreed that lot was proportionally assessed.) For the reasons stated below, the appeal for abatement on the Property is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) as stated in Taxpayer Exhibit No. 1, the Property was subdivided from an existing mobile home park in 2007 "at the peak of the real estate boom" in anticipation of values increasing because of the construction of a new Wal-Mart one-half mile north of the Property;

(2) after subdivision, they offered the Property for sale with a "high asking price" ($300,000 - $350,000), but, when they received no offers, they reduced the asking price to $99,000 in 2008 and then reduced it further to $49,900;

(3) the Property does not have water or sewer installations and the connection costs would be between $75,000 and $100,000;

(4) the four comparable assessments and the three comparable sales in Taxpayer Exhibit No. 1 indicate the Property is disproportionally assessed;

(5) the assessments should be abated to a market value of $25,000 - $35,000, adjusted by the levels of assessment in tax year 2009 and 2010; and

(6) an award of costs to the Taxpayer should be made as indicated in Taxpayer Exhibit No. 2.

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in 2006 and then again in 2011;

(2) one of the Taxpayers' comparables (Map 402, Lot 21, owned by Walker Home Sales) was assessed at $75,000 in tax year 2010 (after the Town discovered it was underassessed at $17,900 in tax year 2009); and

(3) the "equalized market value" indication ($93,800 assessment divided by 107.1% level of assessment in 2010 = $87,600, rounded) supports the proportionality of the assessments for both tax years.

The parties agreed the level of assessment was 105.6% in tax year 2009 and 107.1% in tax year 2010, the median ratios calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers met their burden of proving disproportionality. The assessments should be abated to $75,000 for tax years 2009 and 2010 and the appeals are granted for the following reasons.

In arriving at a proportionate assessment, all relevant factors must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board has the discretion to evaluate and determine whether any piece of evidence is probative. 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). 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 Taxpayers acknowledged having an inflated idea of the market value of the Property when they subdivided their land and placed the Property on the market for $350,000 in 2008 as they were hopeful construction of Wal-Mart would spur development in the area. Receiving no offers to purchase, they reduced the asking price to $99,000 in 2008 and then to $49,900. They did not present an appraisal to establish market value, but relied instead upon the presentation package (Taxpayer Exhibit No. 1) prepared by their tax representative.

There can be little doubt the market value of the Property was below the asking prices set in 2008 and 2009. The value enhancing effect of proximity to the new Wal-Mart anticipated by

the Taxpayers did not materialize, the overall real estate market declined and any knowledgeable purchaser would have taken into account the cost of installing water and sewer services.

On the other hand, the Property is in a good location, abuts two automobile dealerships and is near a restaurant, and can be developed commercially under existing zoning. These are factors lead the board to conclude the Property had a higher value as of the assessment dates than argued by the Taxpayer's representative at the hearing ($25,000 - $35,000).

Weighing all of the evidence presented, and using its judgment and experience, the board finds the assessment should be abated to $75,000 for both tax years. The Property is most similar to one of the "Walker Motor Sales" lots, Map 402, Lot 21 ("Lot 21"), which the Town assessed for $75,000 in 2010. (See Municipality Exhibit A; and Town's September 4, 2012 letter with attachments.[1])

The board considered all of the other arguments presented by the Taxpayers and finds they do not satisfy their burden of proving a larger abatement is warranted. The board also denies the Taxpayers' request for costs. The Town reduced the assessment on the Property substantially and had a good faith basis for not agreeing the value was as low as claimed by the Taxpayers. On the facts presented, the board finds the Taxpayers did not meet their burden of satisfying the standard for awarding costs set forth in Tax 201.39.

In summary, the board finds the assessments on the Property should be abated to $75,000 for tax years 2009 and 2010, but denies the Taxpayers' requests for costs. The appeals are therefore granted.

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[1] The Town noted at the hearing that Lot 21 owned by Walker Motor Sales, Inc. was underassessed in 2009 (at $17,900) and the Town corrected and revised this assessment upward in 2010. The underassessment of others is not a valid ground for an abatement. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

If the taxes have been paid, the amount paid on the value in excess of $75,000 for tax years 2009 and 2010 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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Michele E. LeBrun, Chair

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Albert F. Shamash, Esq., Member

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Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Haverhill, 2975 Dartmouth College Highway, N. Haverhill, NH 03774; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A PO, Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: 11/1/12

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Anne M. Stelmach, Clerk