Jeffrey and Ann Warnock

v.

Town of Exeter

Docket Nos.: 24987-09PT/25502-10PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2009 assessment of $443,700 (land $172,300; building $271,400) and the 2010 assessment of $457,800 (land $137,200; building $320,600) on Map 79/Lot 25, 2 Runawit Road, a single family home on 1.5 acres (the "Property"). The board held a consolidated hearing on both appeals on August 11, 2011. For the reasons stated below, the tax year 2009 appeal is denied and the tax year 2010 appeal is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality for 2009 and carried their burden for 2010.

The Taxpayers argued the assessments were excessive because:

(1) an appraisal prepared by Beverly George, a certified general appraiser (the "George Appraisal," Taxpayer Exhibit No. 1) estimates the Property had a market value of $400,000 as of April 1, 2009;

(2) the Town used the same assessed values in 2009 as in 2008 even though the market peaked in 2008 and "bottomed out" in 2009 (after prices fell in September, 2008), relying on sales before prices started to decline, as reflected in the newspaper articles and other documents provided to the board;

(3) the Town may have assessed other colonial-style properties in the subdivision comparably, but those assessments do not reflect market values;

(4) the subdivision where the Property is located (Pickpocket Woods, created in 1965) has privately maintained, narrow (15-foot wide) roads and a private water and sewer system;

(5) there were only two sales in this subdivision in 2009 (with another three properties taken off the market) and these two cape-style properties sold for substantially less than their assessed values (included as comparable #4 and comparable #5 in the George Appraisal);

(6) in 2010, the assessment on the Property went up by $14,100 but the Taxpayers analyzed the sales used by the Town and performed an analysis (submitted with their appeal document; see Taxpayer Exhibit No. 2) indicating, on a price per square foot of living area basis, the Property had a market value of approximately $410,000 (3,253 square feet x $130 per square foot = $422,900, rounded, times 97.5% level of assessment = $412,300, rounded); and

(7) based on the evidence presented, including the George Appraisal, the market values of the Property were $400,000 in 2009 and $410,000 in 2010, and the assessments should be abated accordingly, based on the levels of assessment in the Town.

The Town argued the assessment for 2009 was proper and recommended only a modest abatement for 2010 because:

(1) the selectmen voted not to perform a revaluation in 2009 but did so in 2010;

(2) Pickpocket Woods is an exclusive, homogeneous community of about 25 properties in deep woods with private roads in a nice location which has a positive impact on values;

(3) comparable #5 (2 Indian Trail) is not a qualified sale because it was a sale by a relocation company;

(4) the Town used a consistent assessment methodology; and

(5) based upon the evidence presented and its own analysis, the Town recommends an abatement for 2010 based on an estimated market value of $450,000 (adjusted by the level of assessment).

The parties agreed the levels of assessment were 107.5% in tax year 2009 and 97.5 % in tax year 2010, the median ratio for each year calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, and for the reasons discussed below, the board finds the Taxpayers failed to meet their burden of proving disproportionality for tax year 2009 and that appeal is denied; for tax year 2010, however, the board finds an abatement is warranted to $438,800, rounded (based on a $450,000 estimated market value adjusted by the level of assessment), and the 2010 appeal is therefore granted.

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 disproportionality which involves a showing that 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. 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 relied primarily on the George Appraisal and its estimate that the market value of the Property was $400,000 as of the assessment date in 2009. Ms. George attended the hearing and testified about the work she performed in arriving at this estimate. The board finds her testimony and the estimate to be unpersuasive on the issue of disproportionality for at least two independent reasons.

First, the George Appraisal was "updated" and revised to include a total of six properties, not just the three she initially stated she was relying upon and on which her initial estimate was based. (The first three comparables are colonial-style, like the Property, while the last three are cape-style, but Ms. George made no adjustment for this difference.) According to Ms. George, her estimated value did not change at all as a result of the update. The board finds the last three comparables added by Ms. George in her updated appraisal are arguably more similar to the Property than the first three insofar as they share certain common characteristics with the Property, notably being on "private roads." Ms. George found this to be a significant factor, since she adjusted each of her first three comparables by $20,000 because they were on public rather than private roads. (See the George Appraisal, pp. 4 and 9.) Two of the last three of her comparables (9 Runawit Road and 2 Indian Trail) are actually in the same subdivision. (Id., p. 9.)

Second, Ms. George acknowledged that appraisals are never exact and there is a margin of error in any appraisal. When the level of assessment for tax year 2009 (107.5%) is applied to

her estimated market value ($400,000), the indicated assessed value is $430,000. Thus, were the board to accept her estimate at face value, the resulting assessment is just $13,700 less than the assessment under appeal for 2009 ($443,700), a difference of about three percent, which is well within a reasonable margin of error for assessments and appraisals.

The Town's assessor testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

With respect to the tax year 2010 appeal, the board finds the Taxpayers did not meet their burden of proving their estimated $410,000 market value should be accepted and applied to abate the assessment. In presenting this estimate, the Taxpayers simply referenced the George Appraisal (which estimated a value only for 2009[1]), their own belief that the market appreciated only slightly between 2009 and 2010 and average cost per square foot of living area calculations which the board does not find persuasive. Averaging values does not necessarily prove disproportionality. The calculations (with corrections) contained in Taxpayer Exhibit No. 2 are based on living area, which is but one of many factors affecting market value. See Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (in arriving at a proportionate assessment, all relevant

[1] Ms. George was not hired by the Taxpayers to estimate the market value of the Property for tax year 2010 and did not do so. Since she performed no appraisal or analysis for that year, she could not state precisely how the market may have changed between 2009 and 2010.

factors affecting market value must be considered). Thus, the board is unable to place weight on the calculations presented based on this metric.[2]

The board finds the Town's $450,000 estimate to be reasonably supported by the evidence presented, including the documents in Municipality Exhibit A. Applying the 2010 level of assessment (97.5%) to the $450,000 estimated market value yields an assessed value of $438,800, rounded. That assessment is reasonable based upon the evidence presented.

In summary, the board finds the Taxpayer failed to prove the Property was disproportionally assessed for tax year 2009, but that the assessment for tax year 2010 (as acknowledged by the Town) was somewhat disproportional and should be abated to $438,800.

If the taxes have been paid, the amount paid on the value in excess of $438,800 for tax year 2010 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 2010 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, <u>not the date this decision is received</u>. 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] While this exhibit calculates an "average" of $125-$126 per square foot of living area (modified to $130 per square foot at the hearing), there is considerable dispersion in this statistic (a range of $111 to $151), which indicates it may be a poor predictor, by itself, of market value. (<u>See</u> Taxpayer Exhibit No. 2, p. 1; <u>see also</u> Municipality Exhibit A, "Ex. 8," which shows a similarly wide dispersion for six other "Neighborhood Colonial Style Comparables – Assessments," with the Property near the bottom of this range ($136 per square foot of living area in a range from $125 to $187 per square foot.)) Further, the board notes that two of the seven properties selected by the Taxpayers (16 Blackford and 105 Kingston) sold for prices close to or above their "equalized assessments."

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jeffrey and Ann Warnock, 2 Runawit Road, Exeter, NH 03833, Taxpayers; Chairman, Board of Selectmen, Town of Exeter, 10 Front Street, Exeter, NH 03833; and Vision Appraisal Technology, Attn: Mike Tarello, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: 9/21/11

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Anne M. Stelmach, Clerk