

Cobalt Properties NH Corp.

v.

Town of Tilton

Docket No.: 25015-09PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$3,227,100 (land \$2,567,000; building \$660,100) on Map R23/Lot 7, a service station on 2.57 acres (the “Property”). For the reasons stated below, the appeal for abatement 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-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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) when setting the land portion of the assessment, the Town relied primarily on the purchase price paid by Irving Oil (“Irving”) for the abutting Mobil Oil (“Mobil”) parcel formerly identified as R23-6 on the Town tax maps;

- (2) reliance on this sale is improper because it is not an arm's-length transaction due to the fact Irving purchased the abutting Mobil site primarily to increase its signage visibility from Interstate 93 and may have paid a premium above this property's market value;
- (3) although the Irving and Mobil sites have subsequently been merged, the Town has continued to treat the former Mobil site as a buildable lot which overestimates its contributory value;
- (4) the Property's land value should be similar to the land assessment on the Exxon/Evans Express property (approximately \$14 per square foot);
- (5) the Property's market value was \$2,230,000 on April 1, 2009 based on a land value calculated using \$14 per square foot coupled with the Town's improvements values; and
- (6) an appropriate assessment for the Property can be calculated by using this market value estimate and the Town's 99.1% general level of assessment for tax year 2009.

The Town argued the assessment was proper and should not be abated because:

- (1) the Taxpayer's representative has not provided any probative evidence of the Property's market value;
- (2) the spreadsheets in Taxpayer Exhibit Nos. 1 and 4 are merely a listing of data with no analysis;
- (3) the Taxpayer's representative did not employ any of the traditional real estate appraisal approaches to estimate the Property's market value;
- (4) the Town has assessed the Property using the same methodology as for all similar properties in the Property's neighborhood and throughout the Town; and
- (5) the Taxpayer has not carried its burden of proof and the appeal should be denied.

The parties stipulated the general level of assessment in the Town was 99.1%, the median ratio determined by the department of revenue administration for the 2009 tax year.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to carry its burden of proof to show the Property was disproportionately assessed and the appeal is therefore denied.

To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that it is paying more than its proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). This burden can be carried by establishing that the Property is assessed at a higher percentage of market value than the percentage at which property is generally assessed in the municipality. Id. at 368.

The board finds the Taxpayer did not present any credible evidence of the Property's market value. This market value estimate would then have been compared to the Property's assessment and the general level of assessment in the Town to determine if an abatement was warranted. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The Taxpayer's representative, Mr. Jon Rice of CPTM Consulting Group, LLC, was its sole witness. As the Town noted, Mr. Rice is not qualified either as a professional appraiser or as an assessor. Mr. Rice nonetheless based his presentation on a belief the Town erroneously relied primarily on the sale of the former Mobil site (Map R23-6) for the land portion of the assessment for the Property and this reliance resulted in an overstated contributory value and disproportional assessment. Mr. Rice asserted (without any supporting documentation or a Taxpayer witness) that the purchase of the Mobil site was primarily to acquire the opportunity to enhance Irving's visibility from Interstate 93 because of the existing signage on the Mobil site. Subsequent to the purchase, Irving replaced the Mobil sign with an Irving sign.

In support of his arguments for a tax abatement, Mr. Rice submitted an assessment comparison spread sheet (Taxpayer Exhibit No. 1), which he stated shows the disparity between the assessment of the Property and other commercial properties in the neighborhood. He further stated the most relevant assessment comparison to the Property can be made using the land assessment placed on the Exxon/Evans Express site (Map R23-9-200) as it has many similar characteristics to the Property and is located nearby. To arrive at what he felt was a proportional assessment, Mr. Rice first applied the per square foot value attributed to the Exxon/Evans Express site, rounded to \$14.00, to the land area of the Property to determine the land portion of the assessment. He then added the assessed values previously applied by the Town for the improvements and stated the resulting \$2,230,000 value, after factoring by the Town's level of assessment, should be the correct assessment. The board does not agree with this approach or Mr. Rice's arguments that the Taxpayer met its burden of proving disproportionality.

In deciding whether an assessment is disproportional and an abatement is warranted, the board looks at the Property's market value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a Taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985); and RSA 75:1.

Even if a Taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement. Appeal of Walsh, 156 N.H. 347, 356 (2007). Here, the Taxpayer's representative presented no evidence regarding the value of the improvements (applying instead the values shown on the assessment-record card) and instead simply objected to the land portion

of the assessment as being too high, which falls short of what is needed to prove disproportionality.

The Town's assessing contractors, Gary Roberge and Loren Martin of Avitar Associates of New England, Inc., testified in rebuttal the Property was significantly different than the properties listed in Taxpayer Exhibit No. 1, primarily because the former Mobil site could be subdivided as it has sufficient land area and road frontage to be a stand-alone lot of its own. Many of the other properties in the neighborhood, while having more than one acre of land and 100 feet of road frontage, do not have sufficient excess land area or road frontage to be so subdivided. For these reasons, the former Mobil site contributed significantly more value than some of the excess land of the other properties listed.

The Town did not place as high a value on the former Mobil site as the primary site where the Irving station is located. On the assessment-record card, the Town applied a condition factor of 200 (compared to 300 for the Irving site) to recognize it had much less, but still substantial, utility and value. In the absence of probative evidence to the contrary, the board finds the Town's assessment methodology to be consistent and reasonable. The Taxpayer simply did not prove the former Mobil site did not add the contributory value to the Property indicated by the Town in light of its development potential as a separate commercial site.

Additionally, the Town testified the sales Mr. Rice presented in Taxpayer Exhibit No. 4 are not probative because no analysis or adjustments were made for differences the market would recognize between the various properties listed. Finally, the Town argued Mr. Rice offered no estimate of market value based on any of the recognized appraisal approaches and the approach he did present is not probative of a disproportional assessment. The board agrees.

The board finds Mr. Rice's reliance on the information in Taxpayer Exhibit Nos. 1 and 4 is misplaced. The mere listing of assessments and sales without any comparison or analysis applied to them falls far short of probative evidence that the Property is disproportionately assessed.

For all these reasons, the board finds the Taxpayer failed to carry its burden of proof and the appeal 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

Cobalt Properties NH Corp. v. Town of Tilton

Docket No.: 25015-09PT

Page 7 of 7

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: CPTM Consulting Group, LLC, Attn: Patrick Bigg, President, 55 South Commercial St. - 3rd Fl., Manchester, NH 03101, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Tilton, 257 Main Street, Tilton, NH 03276; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 9/20/11

Anne M. Stelmach, Clerk