

Vissarion Tsourvakas

v.

Town of Auburn

Docket No.: 25847-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$292,700 (land \$191,300; improvements \$101,400) on Map 26/Lot 19, 15 Chester Road, a commercial building on 2.003 acres (the “Property”). (The Taxpayer also owns, but is not appealing, Map 26/Lot 19-1 assessed at \$340,800 and the parties agreed that lot was proportionally assessed.) For the reasons stated below, the appeal for further 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer, represented by David H. Morin, a commercial real estate broker, argued the abated assessment was still disproportionate because:

- (1) the Property is oddly configured (as shown in Taxpayer Exhibit No. 1) which occurred because the Taxpayer subdivided a larger property in 2002 and needed to meet a two-acre minimum lot requirement;
- (2) only about one acre is useable, however, and the remainder is delineated as wetlands;
- (3) the Property is disproportionately assessed when compared to two other commercial properties because, as detailed in Taxpayer Exhibit No. 1, the assessed land value of the Property on a per acre basis is much higher than either comparable; and
- (4) the assessment should be abated to reflect a market value of \$250,000 (with \$125,000 attributed to the land and \$125,000 attributed to the building).

The Town argued the assessment, as abated, was proper because:

- (1) the Town performed a revaluation in 2010;
- (2) during the mediation process, the Town's assessor physically inspected the Property and abated the assessment from \$356,400 to \$292,700 (see Municipality Exhibit A, a revised assessment-record card) based on her observations of the site;
- (3) the Property sold for \$290,000 on March 30, 2012, which, when adjusted for time, supports the proportionality of the assessment, as does an income approach (included in Municipality Exhibit B); and
- (4) the Taxpayer failed to meet his burden of proving disproportionality and the appeal should be denied.

The parties agreed the level of assessment in tax year 2010 was 100.3%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proving disproportionality. The appeal is therefore denied.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). To prevail on this appeal, the Taxpayer had the burden of proving the market value of the Property, as of the assessment date, was below \$291,800 (\$292,700 abated assessed value divided by the 100.3% level of assessment = \$291,800, rounded, indicated market value).

To determine whether the Taxpayer has met this burden of proof, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board considered the evidence presented by the Taxpayer’s representative, including the existence of wetlands on one side of the Property and its irregular shape. However, Mr.

Morin presented no evidence as to how these factors may have adversely impacted the Property's highest and best use as a restaurant or its market value. For example, there was no evidence presented that the Property lacked adequate parking or that access was inhibited by the presence of wetlands on one side of the property. (See the maps included in Taxpayer Exhibit No. 1.)

The board is also unable to agree with the contention (also reflected in Taxpayer Exhibit No. 1) that simply computing and comparing the average assessed land value of the Property (\$191,300 divided by 2.003 acres) with two other larger commercial parcels (consisting of 4.47 acres and 9.73 acres) is probative of disproportionality. While the absolute value of land generally increases with size, value on a per acre basis is likely to decrease rather than increase on larger parcels of land. Also, the calculations in this exhibit are based on total acres rather than useable acres and it is not clear how the three properties actually compare in terms of useable acreage.¹ In addition, the calculations make no adjustments for locational differences between the properties. The Town noted the Property has a locational advantage because it is quite close to the Town center.

There is also a problem in comparing assessed values because of the possibility, conceded by the Taxpayer's representative, that the other two properties may have been underassessed by the Town. The underassessment of other properties does not prove the over assessment of the Property and is not grounds for a further tax abatement. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

¹ Mr. Morin's comparison of the Property to the assessments of two other properties without considering the useable acreage contradicts his testimony at the hearing that "most commercial properties sell on a per useable acre basis." In the board's experience, that statement may be true for vacant commercial land, but developed properties are typically valued using a different unit of comparison (e.g., price per bed for student housing, price per seat for restaurant properties or price per square foot for retail properties). The Property's highest and best use is for its continued use as a restaurant and would likely be valued with a different metric than on a per useable acre basis.

The Taxpayer did not present an appraisal or any comparable sales to support its contention that a further abatement is warranted for tax year 2010. The Town noted the Taxpayer sold the Property in March, 2012 for \$290,000 in an arm's-length transaction, with the buyer attesting under oath (in the Form PA-34 included in Municipality Exhibit B) that the selling price was the "fair market value" and no personal property was included in the sale price. The Taxpayer had originally listed the Property for sale for \$345,000 in January, 2011 and his representative (Mr. Morin) was the listing broker.²

The board has the discretion to evaluate and determine the credibility of a sale price as being indicative of market value. See, e.g., 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). However, where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). The board finds the sale price and other evidence presented by the Town is reasonably supportive of the proportionality of the assessment.

In addition, 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 the proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

For all of these reasons, the appeal for a further tax 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

² At the hearing, Mr. Morin stated the sale price of \$290,000 was for a "going concern" and included not just the real estate, but furniture, fixtures and equipment ("FF & E") and other components of the business. However, Mr. Morin did not present any evidence regarding the values of those components and how they contributed to the sales price (i.e., a business valuation appraisal, inventory and equipment list, or purchase and sales agreement).

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: David Morin, 28 Seasons Lane, Londonderry, NH 03053, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Auburn, PO Box 309, Auburn, NH 03032-0309; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 1/8/13

Anne M. Stelmach, Clerk