Francis McKenna and Marcia McKenna

v.

Town of Hancock

Docket No.: 26473-11PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2011 assessment of $882,800 (land $775,000; building $107,800) on Map U16/Lot 0011, 111 Old Town Road, a seasonal camp on a one acre lot with frontage on Nubanusit Lake (the "Property"). For the reasons stated below, the appeal for abatement 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 board finds the Taxpayers met this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Town's contract assessor (Jeff Earls of Cross Country Appraisal Group, LLC) agreed the house style was better described as a "cabin" than as a "cape," does not have two full bathrooms

and has only a partial basement (not a full basement), acknowledged errors on the assessment-record card ("ARC"), resulting in his recommendation of an abated assessment of $845,000, which the Taxpayers believe is still too high;

(2) as explained in Taxpayer Exhibit No. 1, the Property is on Old Town Road, a portion of which the Town seasonally maintains but does not plow, and this limits use of the Property to non-winter months and results in an inability to obtain comprehensive property insurance, precluding the Taxpayers from renting the Property and negatively impacting market value;

(3) the adjacent "Carlisle" lot is similar to the Property in terms of its size and waterfront characteristics, but is superior to the Property in terms of condition of improvements and is a year-round residence, and sold in December, 2013 for $725,900 after being on the market for approximately three years; and

(4) the market value of the Property as of the assessment date (April 1, 2011) was in the range of $750,000 and the assessment should be abated accordingly.

The Town did not attend the scheduled hearing[1] and therefore did not present any arguments to defend the proportionality of the assessment or Mr. Earls' representations to the Taxpayers regarding a recommended abatement. The Taxpayers did not dispute the level of

[1] The hearing was duly noticed and scheduled to begin at 8:30 a.m. on May 20, 2014. Neither Mr. Earls nor any other Town representative appeared at that time; nor did anyone from the Town notify the board or the Taxpayers as to why the start of the hearing should be delayed. The board therefore opened the hearing, heard the Taxpayers' presentation and closed the hearing at 10:13 a.m. See Tax 202.06 (j):

> If a municipality or any of its witnesses . . . fails to appear within 30 minutes of the scheduled hearing time, the board shall start the hearing and decide the appeal based on the hearing and record. If a municipality arrives before the conclusion of a hearing, the board shall provide . . . an opportunity to be heard.

The board was informed Mr. Earls arrived at the board's office approximately 45 minutes after the hearing ended, spoke with the Clerk and was informed of these facts.

assessment in the Town in tax year 2011 was 95.3%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers met their burden of proving the Property was disproportionally assessed in tax year 2011. The appeal is therefore granted and the 2011 assessment on the Property is abated to $770,700 for the following reasons.

The Property was purchased by the Taxpayers' parents in 1956 (when a large estate on Lake Nubanusit was subdivided into ten lots) and has been in the Taxpayers' family since that time. The present house on the Property was built in the spring of 2000 at a total cost of $82,000. It is a "modest seasonal cottage" -- "a summer only residence never meant for year round habitation" (with no heating or cooling system or chimney). (See Taxpayer Exhibit No. 1.) Contrary to what is stated on the ARC, the cottage is better described as a "cabin" than as a "cape," does not have two full bathrooms (only a ¾ bath downstairs and a ½ bath upstairs), and has only a partial basement, not a full basement. (Id.)

The Taxpayers testified they explained these facts to Mr. Earls, the Town's contract assessor, and, based on these physical characteristics of the cottage, he recommended an abated assessment of $845,000. Subtracting the contributory land value of $775,000 shown on the ARC implies a willingness on the part of the Town's contract assessor to abate the building value to $70,000 (from the $107,800 value shown on the ARC). The Taxpayers, however, did not agree this recommended abatement is sufficient because they believe the $775,000 contributory land assessment is too high.

The Taxpayers presented documentation (in Taxpayer Exhibit No. 1) from their insurance broker to the effect that they cannot obtain comprehensive insurance on the Property because the

Town only provides limited maintenance on this portion of Old Town Road and does not plow or sand it in the winter, preventing year-round access.[2] Without such insurance, they cannot rent the Property to third parties (such as vacationers).

They testified the limited insurability of the Property makes it less valuable than other properties on the lake which have year-round access provided over Town-maintained roads. According to the Taxpayers, the Town places the same assessed land values on these other properties even though they have superior access and presumably can obtain comprehensive insurance. The Taxpayers also noted the house on the Property is inferior in quality and size to other larger, year-round waterfront homes (see photographs and ARCs of the "Joseph" and "Hart" properties in Taxpayer Exhibit No. 1).[3]

The board is persuaded by the testimony and other evidence presented by the Taxpayers, which were not rebutted by the Town due to its non-appearance at the scheduled hearing. (See fn. 1.) Using its judgment and experience, the board finds a 10% negative adjustment to the land value is warranted (due to lack of insurability and year-round access) to make the assessment proportional, resulting in a land assessment of $700,000. When added to an adjusted building value of $70,000 and the extra features (deck) value of $700, the total abated assessment for tax year 2011 is $770,700, which the board finds is a proportional assessment.

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[2] The Taxpayers believe the Town has an obligation to maintain this road and should be ordered to do so, as stated in Taxpayer Exhibit No. 1. The board's jurisdiction, however, is limited by statute and the board does not have the authority to make such an order in tax abatement appeals. See RSA 76:16-a; and Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) quoting Appeal of Gillin, 132 N.H. 311, 313 (1989) ("The powers of the board and the rights of taxpayers are entirely statutory and are limited by the terms of the statute") ; cf. Roberts v. Hampton, 115 N.H. 346, 347 (1975) (predecessor board of taxation was correct in stating it "lacked jurisdiction" and could not decide non-tax issue involving sewer rents).

[3] They further noted the "Carlisle" cottage next to the Property was on the market for three years, before selling for $725,900 in December, 2013, but did not present any evidence regarding how market values in 2013 compared to 2011.

For all these reasons, the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of $770,700 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 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) 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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Albert F. Shamash, 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: Francis McKenna, PO Box 233, 527 Old Marlboro Road, Dublin, NH 03444 and Marcia McKenna, PO Box 222, Madison, NH 03849, Taxpayers; Chairman, Board of Selectmen, Town of Hancock, PO Box 6, Hancock, NH 03449; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 6/13/14

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Anne M. Stelmach, Clerk