Robert and Denise Mercier

v.

Town of Bartlett

Docket No.: 26511-11PT

DECISION

The "Taxpayers'" appeal, pursuant to RSA 76:16-a, the "Town's" 2011 assessment of $898,900 (land $187,700; building $711,200) on Map 1RT016/Lot 263, a single-family home on 6.10 acres (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 Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) they purchased the Property in July, 2008 for approximately $950,000 which was at "the peak of the market" and values have since declined;

(2) the assessment is inflated in comparison to the economy and increased 23% in 2011;

(3) an appraisal prepared by Nanci Stone-Hayes of Yankee Appraisals (the "Stone-Hayes Appraisal", Taxpayer Exhibit No. 1) estimated the market value of the Property was $700,000 as of December, 2011 and this is the best evidence of market value;

(4) the best comparable property is 24 Laurel Ledge which sold for $875,000 in December, 2011 and, although it is substantially larger than the Property with more expansive mountain views, it was constructed by the same builder with similar quality materials and finishes (see Taxpayer Exhibit No. 2); and

(5) the assessment should be abated to a market value of $700,000, adjusted by the level of assessment.

The Town argued the assessment was proper because:

(1) a town-wide revaluation was completed for tax year 2011and the Town's comparable properties show the Property was assessed consistently with other properties in the Pear Forest and Pear Mountain developments, which are in close proximity to each other and were developed by the same builder (see Municipality Exhibit A, Attachment F);

(2) two of the comparable sales used in the Stone-Hayes Appraisal are not comparable to the Property in terms of "quality, location, depreciation, land area and square footage" (see Municipality Exhibit A, unnumbered); and

(3) the Property has been "fairly and equitably assessed as compared to similar properties" and the appeal should be denied. (See Municipality Exhibit A, Tab F.)

The parties agreed the level of assessment in the Town was 96.8%, the median ratio calculated by the department of revenue administration. At the conclusion of the hearing, the Town submitted Findings of Fact and Rulings of Law, which the board has responded to in the Addendum.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $774,400 (based on a market value finding of $800,000 adjusted by the level of assessment).

As prescribed in RSA 75:1, ad valorem assessments must be based on market value. Proportionality is determined by arriving at a reasonable estimate of 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). In order to prevail in this appeal, the Taxpayers had the burden of proving the market value of the Property in 2011 was less than approximately $928,600 ($898,900 divided by the 96.8% level of assessment).

The Property in this appeal is a single-family residence on 6.1 acres. Built in 2007, the house consists of more than 4,000 square feet on two levels constructed of very good quality materials, is in very good condition and has some views of the White Mountains. It is in a small subdivision ("Pear Forest") in close proximity to Route 16, the main traffic artery in the area.

The Taxpayers relied upon the Stone-Hayes Appraisal, which utilized the sales comparison approach and compared three properties that sold within the appropriate timeframe to the Property: 24 Laurel Ledge sold in December, 2011 for $875,000; 46 Parker Ridge Road sold in September, 2011 for $575,000; and 102 Stanton Farm Road sold in May, 2009 for $745,000. After adjusting for market conditions and differences in physical characteristics, Ms. Stone-Hayes arrived at market value indications for the Property ranging from $683,250 to

$722,000 and reconciled to a market value opinion of $700,000 as of December 31, 2011.[1] (See Taxpayer Exhibit No. 1, p. 2 of 4.)

The board finds the Stone-Hayes Appraisal understated the contributory value of the Property's finished basement area, which in effect is a full, finished floor of additional living space with similar quality materials as the main level. The rear of the Property is above grade, so the lower level benefits from windows and a substantial amount of daylight. The board finds it is more appropriate to value the Property with two floors of living area constructed on a slab. Comparable Sale No. 1 (24 Laurel Ledge (the "Laurel Ledge property")) is similarly constructed with a full, finished basement and, like the Property, would more appropriately be valued with two floors of living area constructed on a slab. (Taxpayer Exhibit No. 1, p. 2 of 4, "Comparable Sale No. 1".)

The Laurel Ledge property was constructed by the same builder as the Property, is approximately 5 years older, is larger and has more expansive views. It was constructed with similar quality materials. The Taxpayers testified the Property and the Laurel Ledge property were very similar in design and appeal except the Laurel Ledge property "just has more of everything," including square footage, a three-season room, an extra fireplace, a lap pool and indoor spa.

The Town argued the comparable "properties relied-on by Ms. Stone-Hayes,… are similarly not comparable to the subject property in quality, depreciation, land area, and square footage." (See Town's Proposed Findings of Fact and Rulings of Law, ¶2.) Additionally, the Town argued that the comparable properties on Parker Ridge Road and Stanton Farm Road are in the Stillings Grant subdivision, which is more than 10 miles from the Property and consists of

[1] Ms. Stone-Hayes stated at page 2 of 4 "[t]here has been no changes to subject property since 4/1/2011 and the effective date of this appraisal and there does not appear to be any change in market value between the 2 dates."

"lesser quality homes." During the hearing, however, Ms. Lynn Jones testified for the Town and conceded, although the comparable sales utilized by Ms. Stone-Hayes weren't "perfect," there were a limited number of sales in the Town during this timeframe and Ms. Stone-Hayes "used the best information available."

This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The board finds the comparable properties are similar enough to the Property and, with appropriate adjustments, do provide credible indications of market value for the Property. The process of selecting comparable sales and adjusting for differences between them and the subject property is the underlying premise of the sales comparison approach to value, one of three standard approaches to value.[2]

As stated above, the board finds the Stone-Hayes Appraisal understated the contributory value of the finished lower level of the Property as its level of finish and quality of materials is equal to that of the above grade living area. When appropriate modifications to the sales comparison approach are made to reflect this fact, the comparable sales provide a range of value indications from approximately $755,000 to $800,000. The board finds most weight should be placed on the Laurel Ledge property and Comparable Sale No. 3, as they are similar to the Property in terms of quality, condition, design and overall market appeal and that a

[2] Using this [the sales comparison approach] approach, an appraiser processes a value indication by comparing the subject property with similar properties…. The appraiser estimates the degree of similarity or difference between the subject property and the comparable sales by considering various elements of comparison. Dollar or percentage adjustments are then applied to the sale price of each comparable property. (The Appraisal Institute, The Appraisal of Real Estate, 11th ed., pp. 90-91.)

prospective buyer would consider them appropriate substitutes for the Property. Additionally, the board finds a market value estimate at the high end of the indicated range is appropriate for the Property, due to its location in a small subdivision and its high level of quality and condition.

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 Town presented evidence as to the methodology used in assessing other properties in the Town. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-190 (1982). The board finds its estimate of value of $800,000 falls within the range of value utilized by the Town.

The board therefore finds the proper assessment of the Property to be $774,400 based on a market value finding of $800,000 adjusted by the level of assessment.

If the taxes have been paid, the amount paid on the value in excess of $774,400 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, 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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Theresa M. Walker, Member

ADDENDUM

TOWN'S PROPOSED FINDINGS OF FACT AND RULINGS OF LAW

The "Requests" received from the Town is replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

a. the Request contained multiple requests for which a consistent response could not be given;

b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the Request was irrelevant; or

e. the Request is specifically addressed in the Decision.

Findings of Fact

1. The properties which Mr. and Mrs. Mercier ("Taxpayers") rely on to support their claim of disproportional taxation are not comparable to the subject property in quality, location, depreciation, land area, and square footage.

Neither granted nor denied.

2. The properties relied-on by Ms. Stone-Hayes, expert appraiser for the Taxpayers, are similarly not comparable to the subject property in quality, depreciation, land area, and square footage.

Neither granted nor denied.

3. Beyond the alleged comparables relied on by the Taxpayers and their expert, no other evidence regarding the alleged proportionality and legality of the property taxation of the subject property is before the Board.

Neither granted nor denied.

4. The Town's equalization ratio in the relevant tax year supports the conclusion that in general, property sales in the Town of Bartlett were higher than property assessments in tax year 2011.

Neither granted nor denied.

5. The majority of properties relied on by the Taxpayers were sold for values higher than, or in close proximity with, their Town assessments.

Granted.

6. The main comparable relied on by the Taxpayers, bearing the most significant resemblance to the subject property, that of 24 Laurel Ridge Road, sold in December of 2011 for $30,000 more than the Town assessed value.

Granted.

Rulings of Law

1. The Taxpayers failed to meet their burden of proving, by a preponderance of the evidence, that the assessment in question was disproportionate or illegal and resulted in the Taxpayers paying a disproportionate share of taxes pursuant to N.H. Admin. Rules, Tax 203.09.

Denied.

2. The expert appraisal relied upon by the Taxpayers utilized faulty methodology and is therefore erroneous because it depended on the base square foot costs of non-comparable property to estimate the appropriate base square foot cost for the subject property for tax year 2011 and reach an appraisal value.

Denied.

3. The Town's tax year 2011 assessment on the property of $898,900 was not disproportionate or otherwise illegal and did not result in the Taxpayers paying a disproportionate share of taxes pursuant to N.H. Admin. Rules, Tax 203.09.

Denied.

4. The Taxpayers Abatement Appeal is denied.

Denied.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John T. Fichera, Esq., Dewhurst Law Firm, PO Box 518, Conway, NH 03818, counsel for the Taxpayer; Justin L. Pasay, Esq., Donahue Tucker & Ciandella, PLLC, 225 Water Street, Exeter, NH 03833, counsel for the Town; and Selectmen's Office, Town of Bartlett, 56 Town Hall Road, Intervale, NH 03845.

Date: 7/9/14

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Anne M. Stelmach, Clerk