Stephan P. Morrissey

v.

Town of Effingham

Docket No.: 26515-11PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2011 assessment of $166,600 (land $33,100; building $133,500) on Map 407/Lot 20, a partially constructed single-family home on 2.02 acres (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) Margery J. MacDonald, a real estate broker, completed a "broker's opinion of value" (the "MacDonald Opinion" - Taxpayer Exhibit No. 1) in March, 2012[1] and concluded the Property should be listed for sale with an asking price of $49,000;

(2) due to its unfinished condition, the Property would not be eligible for financing and would need to be sold to a cash buyer;

(3) the Property sold in an arm's-length transaction for $49,900 in September, 2012 and this is some indication of market value;

(4) the Property is "self built" with generally below average quality materials, was never completed and has been "exposed to the elements" from 2004 until 2012, and the interior was abandoned by the Taxpayer's former spouse for over a year "with unknown freeze damage and some mold issues resulting";

(5) the Town's contract assessor ("Avitar") utilized finished homes in better neighborhoods to value the Property, then deducted an estimate of what it would cost to complete in order to arrive at the assessed value, which overstates the "as complete" value of the Property and underestimates the completion costs; and

(6) the market value of the Property was $60,000 to $70,000 as of April 1, 2011 and the appeal should be granted.

The Town, represented by Loren J. Martin and Chad Roberge of Avitar Associates of New England, Inc., the Town's contract assessor, argued the assessment was proper because:

(1) the Taxpayer agreed with the Town's methodology of deducting a "cost to cure" from an "as complete" estimate, but he did not provide any estimate of those costs;

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[1] The MacDonald Opinion was prepared for Ms. Joanna Watkins, the Taxpayer's former spouse.

(2) the MacDonald Opinion provided a recommended listing price of $49,000, but utilized several sales of properties that were foreclosures or otherwise distressed and did not include any information regarding adjustments made in order to arrive at that opinion of value;

(3) the Town completed a "comparable sales report" (Municipality Exhibit A), utilized the sales of three properties, made appropriate adjustments to account for differences between the Property and sale properties, and then deducted $50,000 as a completion cost estimate to arrive at a range of value indications for the Property of $164,600 to $190,050, which is supportive of the assessed value; and

(4) the appeal should be denied.

The parties agreed the level of assessment for tax year 2011 was 103.2%, the median ratio calculated by the department of revenue administration.

At the conclusion of the hearing, the board left the record open to allow the Town ten (10) days to provide written comments regarding the MacDonald Opinion. Those comments were filed with the board on April 21, 2014 and were considered along with all other evidence provided during the hearing.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be $77,400 based on a market value finding of $75,000 adjusted by the level of assessment ($75,000 X 103.2%, rounded).

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 Taxpayer had the burden of proving the market value of the Property in 2011 was less than approximately $161,400, ($166,600 divided by the 103.2% level of assessment).

The Property consists of a 2.02 acre lot on a gravel road improved with a partially constructed single-family residence. The Taxpayer testified the Property is "self built" and, although construction began in 2000, it was never completed. In addition, portions of the partially completed residence were "exposed to the elements" for an extended period of time and are in need of repair and/or replacement.

The board finds the Taxpayer's description of the Property as below average is consistent with the MacDonald Opinion, which states:

> The subject property is a very large unfinished two story home with a full walkout lower level. It was designed to have three levels of living including the walkout lower level. It has three+ bedrooms, two full baths, one ¾ bath, a living room, family room, kitchen, dining room, and office. There is a one car garage in the lower level. The exterior of the house has an asphalt shingle roof which could not be seen due to the recent snow fall. The siding is vinyl and is partially complete. The windows are a mixture of vinyl clad and wood windows. The deck is incomplete and neither the deck nor front porch has railings. The deck is not pressure treated and must be taken off and rebuilt. The interior of the house ranges from only studs in the lower level and second floor to finished walls in some rooms on the first floor. It is in total disrepair and is really just a shell which is not very well built. The hearth for the woodstove has collapsed and is no longer usable. There are some strips of electric heat, but not enough to heat the house or to keep it from freezing. There is a forced hot water boiler but it is not hooked up. One bathroom is mostly finished. One of the others has a tub and toilet, but the bathrooms are totally unfinished and they are just placed in the rooms.

The MacDonald Opinion continues to state her professional opinion that the Property should be listed at $49,000… and "[t]he buyer of this property is a contractor, investor or someone who wants an inexpensive property in which to build equity. This property is not

financeable at a bank since it is not livable by financing standards. The buyer must be a cash buyer who has access to funds to complete the home." (See Taxpayer Exhibit No. 1.)

The Property's assessment-record card ("ARC") indicates the Town has assigned the residence an "AO Avg" quality rating and stated it is in "Good" condition for its age. The ARC further states the residence suffers from 5% depreciation from normal wear and tear, and is 70% complete. Based on the above and other considerations, the Town's estimated of the residence, as complete, would have a contributory value of $205,433. The Town then deducts a total of 35% for depreciation and cost to complete to arrive at a final value of $133,500, rounded. This value was then added to the estimated value of the land ($33,100) to calculate a total assessed value of $166,600 ($133,500 + $33,100). (See ARC in Municipality Exhibit A.)

Avitar completed a "comparable sales report" which described the Property as a 2,909 square foot residence with four bedrooms, three bathrooms, a hot water heating system, built in 2003, of average quality and in good condition. Three sales in Town were utilized to estimate the market value of the Property, which sold for $187,000 to $279,533. After adjusting for physical differences and deducting $50,000 for cost to complete, these sales provided a range of indicated values from $164,600 to $190,050, which they indicated is supportive of the assessment under appeal.

The board finds the Taxpayer's evidence and description of the Property more accurately reflects the condition of the residence as of the April 1, 2011 date of assessment. The pictures contained in the MacDonald Opinion clearly depict the condition of the Property was significantly less than "average" and completed portions were in poor condition. Thus, the board finds the Town's analysis understates the estimated cost to complete.

The board finds the MacDonald Opinion, which is based on several distressed sales, is some indication of market value. In the board's experience, estimating market value for this type of property is not a simple calculation as estimating the "as complete" value then deducting the "cost to complete", as this calculation does not include any loss in value for risk associated with the purchase and the potential some of the existing structure may have to be repaired and/or rebuilt. Further, as a "self built" residence, it is likely that it will be "below average" in terms of quality even after construction is complete. Thus, the board finds the quality and condition of the Town's "comparables" are not reflective of the quality and condition of the Property.

The board has the discretion to evaluate and determine the credibility of the sale price being indicative of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); 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 that although the Property was only on the market for 30 days prior to being placed under contract to sell, the purchase price of $49,000 is some indication of market value although not conclusive.

The board considered the Town's testimony regarding the availability of "rehab" financing. However, there is no evidence before the board that this type of financing was available for the Property or what the terms of such financing would be. Additionally, it was the opinion of Margery MacDonald, a licensed real estate broker, that the Property would not be eligible for financing.

The board acknowledges this Property is unique and arriving at a market value estimate is complicated by both its incomplete status and significant condition factors. After review

of all the evidence, the board is not convinced a buyer would not consider razing the existing structure and therefore has given the improvements minimal value. Based on all the evidence presented, the board finds a market value of $75,000 is appropriate for an indicated assessed value of $77,400.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). 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).

If the taxes have been paid, the amount paid on the value in excess of $77,400 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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Stephan P. Morrissey, 345 Russell Station Road, Francestown, NH 03043, Taxpayer; Chairman, Board of Selectmen, Town of Effingham, 68 School Street, Effingham, NH 03882-8104; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: June 3, 2014

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Anne M. Stelmach, Clerk