Jebb Road Real Estate Trust

v.

Town of Merrimack

Docket No.: 26521-11PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2011 assessment of $232,800 (land $199,100; building $33,700) on Map 6A-2 /Lot 170, 15 Jebb Road, a seasonal camp on 0.132 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) an August 23, 2012 comparative market analysis ("CMA") prepared by Molly Cottle of Brin Realty Group/Bedford (the "Cottle CMA") recommended a listing price of $177,267;

(2) a January 2014 CMA prepared by Buddy Pope, Realtor of Bean Group (the "Pope CMA") arrived at a list price suggestion of $147,366;

(3) the contributory land assessment is too high for 0.132 acres with 65 feet of water frontage;

(4) there are issues with water coming over the wall in the spring and the shallow well is inadequate on occasion;

(5) the lot to the right of the Property has 30 feet of water frontage which is shared with four others and the lot on the left is a year round property with a man-made dock less than 10 feet from the Property line both of which negatively impact the market value of the Property; and

(6) the assessment should be reduced.

The Town argued the assessment was proper because:

(1) the Cottle CMA cannot be relied upon because it took the average of three sale prices to arrive at a listing price and, of these three sales, comparable 1 has deeded access to the lake, comparable 2 is not waterfront and has no deeded access to the lake and comparable 3 was a short sale, is not on Baboosic Lake but has steep frontage on the Souhegan River;

(2) many sales were used in the Pope CMA but no adjustments were made to account for their differences to the Property; also, the comparables were not appropriate as many were not waterfront, had steep topography and would require significant adjustments;

(3) the Town performed a comparable sales analysis utilizing four comparable sales and, after adjusting for differences between the Property and the comparables, arrived at an indicated range of market value of $210,314 to $249,740;

(4) the only sale in Merrimack was comparable 1, 20 Lakeside Drive, (comparables 2, 3, 4 were in Amherst) which the Town found to be the best indication of value of the Property; and

(5) based on the evidence, the appeal should be denied.

The parties did not dispute the level of assessment was 101.4%, the median ratio calculated by the department of revenue administration.

Following the hearing, the board directed its review appraiser (Cynthia L. Brown, CNHA) to conduct an inspection, review all evidence submitted at the hearing and perform an independent valuation of the Property. Ms. Brown filed her Appraisal Report (the "Brown Report") on June 27, 2014. Copies of the Brown Report were mailed to the parties and they were given twenty (20) days to submit any written comments. Both parties responded and the board considered their comments during its deliberations.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to meet its burden of proving the Property was disproportionally assessed in tax year 2011. The appeal is therefore denied for the following reasons.

As prescribed in RSA 75:1, assessments must be based on market value adjusted by the level of assessment in the municipality. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To obtain an abatement for tax year 2011, the Taxpayer had the burden of proving the Property had a market value less than $229,600 as of the April 1, 2011 assessment date ($232,800 ÷ 1.014). The board considered all of the evidence and arguments presented and finds the Taxpayer did not meet this burden.

First, the Taxpayer submitted the August 23, 2012 Cottle CMA arriving at a listing price of $177,267 (see Taxpayer Exhibit No. 1). Ms. Cottle stated she reviewed properties similar to the Property which were currently for sale or recently sold. The Town argued the three sales utilized in the Cottle CMA were not comparable to the Property because 2 Penrose Lane does not have frontage on the lake nor does it have water access, 8 Edward Lane was a short sale abutting

the Souhegan River with steep topography and 4 Richards Road has shared, deeded access to the lake. Ms. Brown also reviewed the sales used in the Cottle CMA and determined they are not considered comparable to the Property. (See Brown Report, p. 16.)

Next, the Taxpayer submitted the January 2014 Pope CMA (see Taxpayer Exhibit No. 1). Mr. Pope arrived at a "list price suggestion" of $147,366 based on an average sales price of the comparable sales he utilized. The Town argued the sales were not comparable to the Property because the majority of them were not waterfront properties, had steep topography and some were year-round residences, unlike the Property. The Town did utilize two of the same sales (12 Lakeview and 124 Baboosic Lake[1]) but the Pope CMA made no adjustments to any of the sales (as the Town did) to account for physical differences between the Property and the comparable properties. The Brown Report, pp. 17-19, also discussed the sales in the Pope CMA and found many were not comparable to the Property and some were year-round residences that would need significant adjustments to reflect that difference to arrive at a credible indication of market value.

The Town analyzed four waterfront sales to arrive at its conclusion the Property is fairly and equitably assessed (see Municipality Exhibit A). The Town made adjustments to the sales to account for differences in amount of waterfrontage, topography, size, condition among other differences. The Town arrived at an indicated range of market values of $210,314 to $249,740. Ms. Brown reviewed the comparable sales used by the Town and addressed her findings in the Brown Report at p. 19.

Ms. Brown, after listening to the record of the hearing and viewing the Property, completed an independent appraisal and arrived at a market value opinion of $223,000 utilizing the sales comparison approach. Four sales were analyzed and adjustments were made to account

[1] Mr. Pope indicated 124 Baboosic Lake "is not a good comparable as is MUCH larger, is year round and sold for quite a bit MORE."

for differences in time, location, topography/beach area, size, condition, among other features in arriving at this value.

The market value arrived at in the Brown Report ($223,000) is $6,600 less than the equalized assessment of $229,600, a difference of less than 3%. 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).

Based on the evidence, the board finds the Town's evidence and the Brown Report support the proportionality of the assessment. Arriving at a proportional assessment is a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). 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). Weighing all of the evidence presented and applying its judgment, the board finds the Taxpayer failed to meet his burden of proving the 2011 tax year assessment on the Property was disproportional. For all of these reasons, 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

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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: Jebb Road Real Estate Trust, David A. & Donald W. Roberts, Trustees, 6 Moore Street, Wilmington, MA 01887, Taxpayer; Chairman, Board of Selectmen, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/3/14

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Anne M. Stelmach, Clerk