

Dog House Retreat, LLC

v.

Town of Northwood

Docket No.: 26674-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 abated assessment of \$259,200 (land \$104,500; building \$154,700) on Map 222/Lot 55, a mixed use residential and retail building on 1.870 acres (the “Property”). For the reasons stated below, the appeal for further 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 board finds the Taxpayer met this burden.

The Taxpayer argued the abated assessment was still excessive because:

(1) the Property was purchased in September, 2012 for \$165,000 after being on the market for 994 days;

- (2) an appraisal (the DuBois Appraisal, Taxpayer Exhibit No. 1) prepared by Bryan S. DuBois, a certified general appraiser, estimated a \$220,000 market value as of the assessment date (April 1, 2012);
- (3) the Town's assessor made no attempt to question or challenge the validity of this appraisal during the mediation process or at any time prior to the hearing of this appeal; and
- (4) the assessment should be further abated based upon the market value conclusion of \$220,000 in the DuBois Appraisal.

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

- (1) the Town acted on the abatement application by reducing the assessment (from \$345,300 to \$259,200);
- (2) the Town's analysis (Municipality Exhibit A) adjusts the three comparable sales in the DuBois Appraisal for time and acreage differences with the Property, resulting in an indicated value range of \$223,200 to \$272,800; and
- (3) the appeal for further abatement based on a \$220,000 market value should be denied.

The parties did not dispute the level of assessment in the Town in tax year 2012 was 101.6%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met its burden of proving disproportionality and the market value of the Property in tax year 2012 was \$220,000, resulting in an abated assessment of \$223,500, rounded. The appeal is therefore granted for the following reasons.

Assessments must be based on market value adjusted by the level of assessment. See RSA 75:1; and, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of

Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The board finds the best evidence of market value is the DuBois Appraisal submitted by the Taxpayer. This appraisal reaches a market value conclusion of \$220,000 based upon three comparable sales and other market information. The board does not agree with the Town's arguments that this appraisal underestimates market value. In Municipality Exhibit A, the Town's assessor shows a time adjustment and an acreage adjustment to each of the three sales and calculates the value range noted above.¹ The board, however, does not agree these upward adjustments to the comparables in the DuBois Appraisal are supported by the evidence presented.

In summary, the board finds the DuBois Appraisal presents a more reasonable value conclusion of \$220,000. Adjusting this \$220,000 market value finding by the 101.6% level of assessment results in an abated assessment of \$223,500, rounded, for tax year 2012. The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$223,500 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

¹ This value range supports a market value indication of \$240,000, \$15,100 lower than the equalized value of the Town's abated assessment. (\$259,200 divided by 101.6% level of assessment equals \$255,100, rounded.)

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

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Frederick T. Bussiere, Managing Member, Dog House Retreat, LLC, 9 Colonial Way - Suite E, Barrington, NH 03825, Taxpayer; Chairman, Board of Selectmen, Town of Northwood, 818 First NH Turnpike, Northwood, NH 03261; and Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001, Contracted Assessing Firm.

Date: November 7, 2014

Anne M. Stelmach, Clerk