Steven E. Aubertin

v.

Town of Pittsfield

Docket No.: 26675-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2012 assessment of $50,000 (land $36,000; improvements $14,000) on Map U3/Lot 118, 14 Depot Street, consisting of a vacant 0.11 acre lot with a poured concrete "foundation" (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 board finds the Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property consists of a small (0.11 acre) lot with the remnants of a poured concrete foundation designed for an approved three-family condominium development (to replace a three-

family apartment building that burned down some years ago) but construction stopped when the mortgage company withdrew financing for the project;

(2) the Property is, by definition, a non-conforming lot because it contains less than the 0.25-acres required for development by the Town's Zoning Ordinance (see Taxpayer Exhibit No. 1);

(3) the three-family project could not be built as of the April 1, 2012 assessment date because it is not a permitted use in the "urban" zone, any 'grandfathered' right to do so pursuant to RSA 674:39 has expired and in reality the foundation improvement adds no value to the lot "because of the cost to remove the structures to make the lot conforming" (as stated in the appeal document);

(4) due to the existing zoning limitations, any future development of the Property would require a variance and the uncertainties, difficulties and costs associated with getting such approval reduce market value;

(5) as shown on the assessment-record cards ("ARCs") submitted in Taxpayer Exhibit No. 1, six other lots in the Town, some of which are larger in size, have much lower assessments based on lower land values; and

(6) the assessment on the Property should be abated to "no more than $10,000 to $12,000."

The Town argued the assessment was proper because:

(1) although the assessments on the comparable lots presented by the Taxpayer do appear to be "all over the place," these assessments were set by the Town's prior assessing firm (Cross Country Appraisals) for tax year 2010 revaluation and not by the present assessing firm (Avitar Associates of New England, Inc.) who attended the hearing to defend the assessment;

(2) a showing of assessment disparities, which may reflect the underassessment of other properties, does not carry the Taxpayer's burden of proving the disproportionality of the assessment on the Property;

(3) the Property is a non-conforming lot of record and the Town's attorney has opined (as set forth in his September 10, 2013 letter in Municipality Exhibit A) that the existing foundation "may be used for a purpose allowed by the zoning ordinance" without the zoning requirements being "impediments to development" and therefore, while the grandfathered right to rebuild the three-family structure under RSA 674:39 has "expired" this does not mean the Property cannot be developed with another use; and

(4) since the Taxpayer did not submit any market value evidence to support his claim of disproportionality, the appeal should be denied.

On October 13, 2014, the board took a view of the Property to investigate its condition and the locations and features of the comparable lots discussed at the hearing.

Board's Rulings

Based on the evidence and arguments presented and its own view, the board finds the Property was disproportionally assessed in tax year 2012 and the assessment should be abated to $22,500. The appeal is therefore granted for the following reasons.

To obtain an abatement, a taxpayer must prove, by a preponderance of the evidence, that he or she paid "more than [his or her] proportional share of taxes" in the municipality. [See Appeal of City of Nashua, 138 N.H. at 265; RSA 76:16-a; Tax 201.27(f); and Tax 203.09(a), citing Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).] 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). The 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 Taxpayer is a real estate broker and stated there were no comparable sales of similar properties on which to base a proportional assessment. The Town did not dispute this testimony. Consequently, based on these specific facts in this appeal, the board finds reasonable justification for the Taxpayer's reliance upon comparisons between the Property and the Town's assessments of six other vacant lots in his presentation in order to establish disproportionality.

These lots range in size from 0.04-acres to 0.23-acres and all of them are non-conforming in size under the Town's current zoning. The Taxpayer testified these lots should be similarly assessed and should not have "site condition" factors that vary as widely as they do --from a low of 15% (for Map 15, Lot 25, for example) to 100% (for the Property) -- because "vacant land is vacant land." As a result of these site condition factors and lower base rates (as shown on the ARCs) these comparable lots have much lower assessed land values (ranging from $4,000 to $15,600) than the Property ($36,000). At the hearing, the Town's representative stated she did not inspect the comparable lots discussed by the Taxpayer; therefore, she could express no credible opinion on whether these lots were uniformly and proportionally assessed or

underassessed in one or more instances.[1]

One question that arose in this appeal pertains to the zoning of the Property and the comparable lots. The Taxpayer stated his belief the Property was in the "urban" zone, but the board's review of the Town's zoning districts and zoning map reveal it is in the "commercial" zone, not the urban zone (described as being "primarily residential in character" in the Town's Zoning Ordinance). Consequently, the Property has different permissible uses than properties in the urban zone.

The board compared the features of the Property to what the board finds to be the most comparable lot: Map U2/Lot 34 (the "Aranco Realty" lot on Catamount Road), which had an assessed land value of $15,600 on 0.16 acres. This lot is in the Town's "light industrial/ commercial" zone, which permits a wider variety of uses than the commercial zone. It is in close proximity to the Property, but is larger in size and in a much better location in terms of traffic flow (Route 107) and surrounding commercial development (including a gas station and two active national retailers). The Property, in comparison, is adjacent to a multi-family dwelling and in proximity to commercial buildings that show signs of vacancy and disrepair. For all these reasons, the board finds the $15,600 assessed land value of Map U2/Lot 34 establishes an upper bound for the land assessment of the Property.

In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. at 67-68. Weighing the evidence as a whole, including zoning limitations and locational features, and using its judgment and

[1] The information on the ARCs, combined with observation on the view, suggest there may be some inconsistencies in the Town's assessments of vacant land. The board notes that the Town underwent a reevaluation in 2010 and, to comply with state law, will have to perform another revaluation by 2015 (see RSA 75:8-a) which should be used to revise and correct assessments.

experience, the board finds an assessed land value of $12,000 results in a proportional assessment in tax year 2012.

The board next considered the existing foundation and its likely contributory value, weighing the Taxpayer's testimony on this issue. He testified the foundation had been exposed to the elements for approximately eight years. While this appears to be true, the poured concrete foundation is protected from trespassers and possible vandalism by a fence and showed little, if any, signs of deterioration or decay when the board took a view of the Property. The Taxpayer further testified, and the board confirmed on the view, that the foundation consists only of walls and that no floor was constructed in the foundation, a fact evidenced by the considerable vegetation growth covering the interior of each section of the foundation.

The constructed walls of the foundation are configured for three adjoining residential condominium units, each of the same size. The board finds there is no dispute the Taxpayer, in tax year 2012, no longer had approvals for building three residential condominium units on the Property. Therefore, the existing foundation is unlikely to have full utility and may require modification (if not removal) if the lot is developed for some other permitted use at some point in the future. The Town argued the lot could be developed in some other way (yet to be determined), but not necessarily the multi-family use envisioned by the Taxpayer. (See Municipality Exhibit A.) Weighing these arguments and the evidence presented, the board finds the contributory value of the improvements should be adjusted by a 75% condition factor, resulting in an assessed value of $10,500.

For these reasons, the board finds the Property was disproportionally assessed and the tax year 2012 assessment should be abated to $22,500 (land $12,000; improvements $10,500). The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of $22,500 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, <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

_____
Albert F. Shamash, Member

_____
Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Steven E. Aubertin, 78 Old Rochester Road, Center Barnstead, NH 03225, Taxpayer; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/21/14

_____
Anne M. Stelmach, Clerk