

Steven E. Aubertin

v.

Town of Pittsfield

Docket No.: 26675-12PT

ORDER

The board has reviewed the “Town’s” October 24, 2014 Motion for Rehearing (“Motion”) and the “Taxpayer’s” October 30, 2014 “Objection” to the Motion. The body of the Motion requests “reconsideration” (rather than a ‘rehearing’) of the October 21, 2014 Decision based on the Town assessor’s ‘belief’ the Decision “is contrary to State law....” The board does not agree. The suspension Order entered on October 30, 2014 is dissolved and the Motion is denied for the following reasons.

The tax abatement statutes are not as limited as the Motion asserts. As noted in prior decisions, the standard for granting an abatement is “good cause,” not necessarily the presence or absence of any particular quantity of market value evidence. See RSA 76:16 and RSA 76:16-a; cf., Littleton Hospital Association v. Town of Littleton, BTLA Docket No. 26537-11PT (March 26, 2013 Order) (denying municipality’s motion to dismiss appeal on the ground taxpayer “does not contest ‘market value’” and did not intend to present market value evidence; board found

taxpayer, by contesting the proportionality of the assessment on other grounds, did have “good cause” to seek an abatement).

The board finds the Motion’s reliance on Porter v. Town of Sanbornton, 150 N.H. 363 (2003) is misplaced. In that decision, the supreme court, after noting a taxpayer’s initial burden of proof, concluded where there is evidence of factors such as “arbitrariness” in the setting of assessments, the burden of producing evidence showing an assessment is proportional shifts to the municipality. (Id. at 371-72.) In deciding Porter, the supreme court cited and discussed Duval v. City of Manchester, 111 N.H. 375, 376 (1971): Duval recognizes that, while the “ultimate requirement” in a tax abatement appeal is a showing that the taxpayer is “being required to pay more than [his] proportionate share of taxes,” evidence of “fair market value” is not “the only means” of doing so. (Id.)

To now contend, as the Motion does, that the assessment on the “Property” was proportional, but that the assessments on six other lots “may” be disproportional (because these “other similar properties appear to be assessed at a lower level”) is contrary to established law and the evidence presented. Because of wide differences in the “condition” factors (15% to 100%) applied by the Town, along with unexplained differences in base rates (\$20,000 to \$36,000, as shown on the assessment-record cards in Taxpayer Exhibit No. 1), the six comparable lots had assessed land values ranging from \$4,000 to \$15,600, compared to \$36,000 for the Property. (See Decision. 4.) The Property’s exceptionally higher assessment makes it far more likely, from a statistical standpoint, the Property was overassessed rather than those other six lots were underassessed, a finding supported by the general principle that assessments carry a presumption of validity. It is well established that a taxpayer has the “right [] to have his property assessed upon the same standard of value [as] that applied in the assessment of other

property” in the Town, not by a different standard. Ainsworth v. City of Claremont, 106 N.H. 85 (1964), citing Rollins v. City of Dover, 93 N.H. 448, 450 (1945).

The Town assessor acknowledged the assessments of these six lots “appear to be ‘all over the place’” (Decision, p. 2) and has not presented any evidence that would support a finding these lots were underassessed. After the hearing and before issuing the Decision, the board took a view to ascertain whether there were material differences that would cause the market to value the Property substantially higher than these lots, but no such differences were discernible.¹ Mere speculation that all six other lots were underassessed and the Property was proportionally assessed is not a valid ground for refusing to grant a tax abatement.

For all of these reasons, the Motion is denied.

Pursuant to RSA 541:6, any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the date on this Order, with a copy provided to the board in accordance with Supreme Court Rule 10(7).

¹ The Town assessor made no objection to Taxpayer Exhibit No. 1, which contains the assessment-record cards for the six lots. She submitted no evidence, and there is no indication on the assessment-record cards, that would support a finding these six lots, which have many similarities to the Property, were not developable. All of them, like the Property, are smaller than the minimum required by the current zoning ordinance; all are in the downtown area of Town and all are impacted by the same economic issues. On the view, the board observed no signs of development activity on any of them. The Taxpayer (a licensed real estate broker) testified, and the Town agreed, there were no comparable land sales during the relevant timeframe. (See Decision at p. 4.)

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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 Order 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: 11/20/14

Anne M. Stelmach, Clerk