Beth Dietz-Tuttle

v.

Town of Rye

Docket No.: 26888-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2012 assessment of $424,000 (land $386,400; improvements $37,600) on Map 84/Lot 58, 31 Breakers Road, a residential camp on 0.11 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. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased for $325,000 in September, 2009;

(2) the $386,400 assessed land value should be reduced to $290,000 based on the information contained in the attachments to the appeal document and in Taxpayer Exhibit No. 1;

(3) this exhibit includes data regarding comparable assessments and sales which demonstrate disproportionality resulted in 2012 when the Town increased the land value from $271,700 in 2011, as shown on the assessment-record card ("ARC"); and

(4) the total assessment should be abated to $327,600 (leaving the improvements value unchanged at $37,600).

The Town argued the assessment was proper because:

(1) the Town employed "KRT Appraisal" to perform a statistical update in tax year 2012;

(2) as stated in the Town's August 6, 2014 Motion to Dismiss, when the Town later discovered discrepancies in certain neighborhood designations for tax year 2012, it made adjustments to correct assessed values for tax year 2013 for other properties [as reflected in the site adjustments map and ARCs submitted with the motion], but did not find any error in the Property's assessment that required correction; and

(3) because the Taxpayer is not "aggrieved," the appeal should be dismissed.

The parties did not dispute the level of assessment in the Town in tax year 2012 was 95.7%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayer failed to meet the burden of proving the Property was disproportionally assessed in tax year 2012. The appeal is therefore denied.

The board consolidated the hearing of this appeal with two other 2012 tax appeals involving properties in the same neighborhood[1] that raised very similar challenges to the Town's assessments in that year and the board is issuing a separate Decision in each appeal. At the hearing, the board first considered the arguments presented regarding the Town's Motion to Dismiss filed only two weeks before the scheduled hearing. That motion is denied.

Determining whether the Taxpayer is "aggrieved" by the 2012 assessment requires inquiry into the evidence to be presented at the hearing regarding whether the Property was disproportionally assessed in that year, not necessarily on whether the Town made corrections to other property values in the next tax year (2013) based on a revised land valuation model for certain properties. Granting the Town's motion would have deprived the Taxpayer of the opportunity of presenting any evidence of disproportionality in 2012. The board therefore proceeded to the scheduled hearing on the merits after denying the motion.

To prove disproportionality and obtain a tax abatement, the fundamental focus must be on the market value of the Property as of the assessment date, adjusted by the level of assessment in the Town. 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); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

Consequently, the Taxpayer had the burden of proving the market value of the Property as of April 1, 2012 was materially less than the equalized value of the assessment: $443,000, rounded ($424,000 total assessment divided by 95.7% level of assessment). The board finds there is insufficient evidence to support a finding of disproportionality in this appeal.

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[1] Those properties are: 50 Jenness Avenue, Map 84, Lot 57-1 (owned by the Taxpayer's husband) in Tuttle v. Town of Rye, BTLA Docket No. 26889-12PT; and 15 Breakers Road, Map 84, Lot 62 in Cahalane v. Town of Rye, BTLA Docket No. 26893-12PT.

The Property was purchased in September, 2009, abuts a property (50 Jenness Avenue) owned by the Taxpayer's husband and is within the Town's "Coastal Overlay District" (or "COD"). The Property has a desirable location reasonably close to the ocean, but is not waterfront and does not have an "ocean view." (See Taxpayer Exhibit No. 1, unnumbered pp. 2-3.)

The Taxpayer questions the proportionality only of the $386,400 assessed value attributed to the land in tax year 2012 and neither the Taxpayer nor the Town has disputed the proportionality of the remaining component of the assessment ($37,600 for improvements). Assessments, however, must be considered as a whole, rather than by an individual component. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007) (even if a taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer still has the burden of proving the aggregate value of the property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement). The Taxpayer did not submit an appraisal to establish the market value of the Property as a whole (land and improvements) as of the assessment date.

The assessed value of the land represents a very large portion (over 97%) of the total assessment. The Taxpayer further noted this component of the assessment increased substantially from 2011 (by $114,700, over 42%) by reason of the statistical update (revaluation) performed in that year. (Cf. Taxpayer Exhibit No. 1, p. 1.) This fact alone is also not probative of disproportionality because unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. See also Appeal of Town of Sunapee, 126 N.H. 214 (1985). The Town presented undisputed evidence that other

properties in proximity to the Property had their land assessments adjusted upwards in 2013, an indication that properties on or near the ocean had been underassessed to some extent. For these reasons, the board can give no weight to the fact the Property's assessment increased from the year prior to the 2012 revaluation.

The Taxpayer compared the land assessment on the Property to other land assessments in 2012, which the Town subsequently corrected. Again, the fact certain other properties may have been underassessed in tax year 2012 is not, in and of itself, a proper ground for a tax abatement on the Property in that year. See Appeal of Cannata, 129 N.H. 399, 401 (1987) (the underassessment of other properties does not prove the overassessment of the property under appeal). The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. Id. (Cf. Taxpayer Exhibit No. 1, unnumbered p. 3, where the Taxpayer states her belief that other properties were "under assessed" in relation to "sale price.")

The Taxpayer presented a large amount of data concerning other assessments and some data pertaining to listings and sales in the neighborhood of the Property. The board has carefully reviewed this data and finds the detailed calculations provided by the Taxpayer regarding mean and median land assessments for nine properties in that "Specific Neighborhood" are not probative of disproportionality. (These calculations, detailed in "Chart 1" of Taxpayer Exhibit No. 1, led to the Taxpayer's conclusion that the land assessment should be abated to $290,000; see also Chart 2, showing similar calculations from another neighborhood.)

In "Chart 3," the Taxpayer presented assessment and sales information for certain properties that sold in the period from April, 2010 to April, 2012. The board examined these

sales in detail but is unable to find they meet the Taxpayer's burden of proving disproportionality.

10 Appledore Avenue, for example, is on a similar sized lot (0.11 acres) as the Property, sold for $485,000 in April, 2011 and was assessed for $473,700 in tax year 2012. While that assessment is about $50,000 more than the Property, the assessed land value ($292,000) is lower and the assessed value of the building and other improvements ($181,700) is substantially higher. Without better evidence regarding the latter components of the assessment and their proportionality, the board is unable to find the comparatively lower land assessment warrants an abatement on the Property, especially given the Town's explanation that the 2012 land assessments on properties in the neighborhood required upward correction. It is likely the sales selected by the Taxpayer to show disparities in land assessments included properties for which the Town found errors requiring such adjustments.

Another property in Chart 3, 2 Willow Lane, is also on a relatively small lot (0.16 acres) and sold for $680,000 in September, 2011 (and resold in August, 2014 for $716,000). This property was assessed for only $526,200 by the Town in 2012, which is some indication of underassessment. Had the Town made an upward adjustment of the land component (from $270,500 to say $370,500), the resulting assessment of this property would be more in line with the sale price in 2011 and more comparable to the assessment on the Property.

Further, the board reviewed the Town's evidence, including the neighborhood delineation map and ARCs submitted with the motion to dismiss. The sales data included in these ARCs is generally supportive of the finding the Property was not disproportionally assessed.

For all of these reasons, the board finds the Taxpayer failed to meet the burden of proving the Property was disproportionally assessed in tax year 2012. The appeal is therefore 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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Albert F. Shamash, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Beth Dietz-Tuttle, PO Box 508, Rye, NH 03870, Taxpayer; Chairman, Board of Selectmen, Town of Rye, 10 Central Road, Rye, NH 03870; and KRT Appraisal, 191 Merrimack Street, Haverhill, MA 01830, Contracted Assessing Firm.

Date: October 10, 2014

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Anne M. Stelmach, Clerk