Erica Broman

v.

Town of Newbury

Docket No.: 27053-12PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 2012 abated assessment of $929,800 (land $752,300; improvements $177,500) on Map 019/Lot 158/408, 224 Route 103A, two residential structures on 2.8 acres of land on Lake Sunapee (the "Property"). For the reasons stated below, the appeal for further 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, represented by her husband (Christopher J. Millette), argued the abated assessment was still excessive because:

(1) while she does not dispute the contributory assessed value of the improvements, the Town overassessed the land and its value should be reduced to $448,000 based on a per acre assessment comparison to a nearby property (246 Route 103A);

(2) an appraisal prepared by a certified general appraiser, Katrina V. Hill, SRA of the R. B. Hill Company (the "Hill Appraisal," Taxpayer Exhibit No. 1) estimates the market value of the Property was $880,000 as of the April 1, 2012 assessment date but overstates market value because of the adverse impact of the right-of-way (easement) over the Property used by an abutting property owner; and

(3) the assessment should be abated to $597,000.

The Town argued the assessment was proper because:

(1) the Town reviewed the Taxpayer's abatement application and abated the assessment from $1,062,300 to $929,800 (see Municipality Exhibit B), which included an adjustment to the land value to take into account the "distance to water and the easement" (see Municipality Exhibit B, Tab 3);

(2) the Hill Appraisal understates the contributory value of the second residence on the Property and, when this component of value is properly adjusted for, the value conclusion from this appraisal supports the equalized value of the 2012 abated assessment under appeal;

(3) Comparable Sale#s 1 and 3 in the Hill Appraisal are the most comparable to the Property and the photographs and other information in Municipality Exhibit A show these sales are supportive of the proportionality of the abated assessment on the Property; and

(4) the appeal for further abatement should be denied.

The parties did not dispute the level of assessment was 101% in tax year 2012, the median ratio calculated by the department of revenue administration. (See Municipality Exhibit A, Tab 1.)

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionally assessed in tax year 2012. The appeal is therefore denied for the following reasons.

"In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town." Appeal of Sokolow, 137 N.H. 642, 643 (1993). To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence that she is paying more than her proportional share of taxes. This burden can be carried by establishing that the Taxpayer's Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

The Property consists of a 2.8 acre site with 100 feet of frontage on Lake Sunapee. It is improved with a single-family residence and a detached garage that also has a two-bedroom, year round apartment.

The Taxpayer did not submit any photographs of the Property (except for the black and white photographs contained in the Hill Appraisal). The Town's color photographs show the Property is attractively landscaped with a sloping topography to the waterfront and good water views from both residential structures. (See Municipality Exhibit A, Tab 4.) The board finds these features compare favorably with those properties relied upon by the Taxpayer (Comparable

Sale #s 1 and 3 in the Hill Appraisal), as shown on the color photographs of them provided by the Town. (Id., Tabs 5 and 6.)

The Taxpayer's argument regarding the disproportionality of the assessed land value rests on a "per acre" calculation comparing the land assessment on one other property (246 Route 103A, Comparable Sale #1 in the Hill Appraisal). This property sold for $905,000 in September, 2011. According to the Taxpayer, if the contributory value of the improvements (as reflected by the Town's assessed value) is deducted from the sales price, it results in a market value indication for the land of $758,000, or approximately $160,000 per acre ($758,000 / 4.6 acres). The Taxpayer argues this is appropriate methodology to value the Property and would result in a contributory land value of $448,000 ($160,000 X 2.8 acres). The board does not agree because the Taxpayer's calculations do not reflect how the market values land.

First, a "per acre" metric is not an appropriate unit of comparison because the primary value of waterfront land often consists of its development potential: if the land can or has been developed with at least one residence, that attribute is more valuable than any excess acreage (above and beyond what is required for development). In other words, excess land (above and beyond what is needed for development) generally adds value, but not to a proportional extent: as a simple example, two acres of waterfront land is likely to be worth more than one acre of similar waterfront land, but not twice as much. This valuation fact is reflected both on the Town's assessment-record cards (which consistently assign a higher value to the primary developed/developable acre and much less value to excess land) and in the Hill Appraisal (where Ms. Hill, on page 7, states she adjusted for "site size" differences between the Property and her comparables at $25,000 per acre, a fraction of what a "per acre" approach would reflect).

Second, the market would consider, along with the quantity of land (acreage), all of the features of the Property, both positive and negative. These features include location, improvements, quality and quantity of the waterfront, distance to the water, topography, the existing right-of-way and other characteristics. Additionally, there was no evidence presented that would allow the board to find the assessed value of the improvements on Comparable Sale #1 in the Hill Appraisal was reflective of market value; those improvements may have been underassessed and the possible underassessment of another property does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For these reasons, a per acre comparison between the assessed land value of the Property and the assessed land value of one other property is misleading and not probative of disproportionality.

Moreover, in making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). 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. Appeal of Walsh, 156 N.H. 347, 356 (2007).

The board also considered the parties' conflicting arguments regarding the Hill Appraisal, which arrived at a market value conclusion of $880,000 for the Property as of the assessment date.[1] (Ms. Hill did not attend the hearing and therefore could not resolve questions regarding her methodology and assumptions.) The Taxpayer argued the Hill Appraisal overstates the value chiefly because Ms. Hill failed to account for the negative impact of the right-of-way on the

[1] The Town also submitted an earlier "Hill Appraisal" (Municipality Exhibit A, Tab 8), prepared by Robert B. Hill of the same appraisal company, which estimated a market value of $990,000 as of April 1, 2003.

Property (an issue discussed further below). The Town, on the other hand, argued the Hill Appraisal actually understates the value because Ms. Hill did not sufficiently account for the contributory value of the second residence on the Property. This is a year-round residence which the Town assessed for $83,600, which the board finds is more reasonable than the very limited value attributed to this improvement in the Hill Appraisal – approximately $30,000 (as reflected in her adjustment to Comparable Sale #4). Adjusting her market value conclusion by this difference makes it fully supportive of the abated assessment and the board finds merit in this Town argument.[2]

Even without this adjustment, her value conclusion is within five percent of the equalized value of the abated assessment. 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).

The Taxpayer emphasized the negative impact of the right-of-way, especially given its location in close proximity to the primary residence (within "4 feet" at some points). Contrary to the Taxpayer's argument, the board finds the Hill Appraisal does take the impact of the right-of-way into consideration. She notes this fact on page 6 of her appraisal and three of the six comparable sales are impacted by right-of-ways; one of them (Comparable Sale # 3) is more severely impacted because its right-of-way is used by multiple other properties (at least three and as many as eight) rather than just one property (as explained by the Town's assessors and as shown in the photographs of this comparable property in Municipality Exhibit A, Tab 6).

[2] The Town further noted the Property is improved with two septic systems (with a combined capacity of eight bedrooms to service the two residential structures), which is a value enhancing feature for waterfront land.

Consequently, the board does not agree with the Taxpayer's argument that the Hill Appraisal overestimates the market value of the Property because of this factor.

For all of these reasons, the appeal for further abatement for tax year 2012 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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Albert F. Shamash, Member

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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: Christopher Millette, 324 Farmington Road, Longmeadow, MA 01106, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Newbury, PO Box 296, Newbury, NH 03255.

Date: January 7, 2015

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Anne M. Stelmach, Clerk