

Mitchell Heller (Deceased) and Rheta Heller

v.

Town of Newbury

Docket No.: 16860-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$490,750 (land \$378,650; buildings \$112,100) on 3.9-acre lot with a single-family house (the Property). The Taxpayers also own, but did not appeal, another 82.6-acre lot in the Town with a \$2,262 current-use assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the land value was too high given its topography, the rockiness of the

shoreline and the incorrect measurement of the water frontage;

(2) the age and condition of the dwelling and boathouse were not properly accounted for;

(3) a market adjustment should have been made to reflect the Property's inability to be subdivided; and

(4) the proper assessment should be \$368,063.

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The Town argued the assessment was proper because:

(1) the Town applied a 50% topography adjustment to account for the sloping terrain from the house to the shore and the rockiness of the shoreline;

(2) sales of waterfront properties on Lake Sunapee indicate the Property's assessment is not disproportionately high regardless of the condition of the improvements;

(3) the boathouse's value takes into account that it was built prior to the enactment of the shoreline protection regulations enabling it to be retained and refurbished.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer raised several concerns with the assessment: (1) a survey map indicated the land size was 3.5 acres, not 3.9 acres; (2) the Town's method of calculating the water frontage was not fairly or consistently applied and the assessment on the land was improper when compared to other land assessments;

(3) the depreciation on the house was too low; and (4) the value placed on the boathouse was too high based on comparable assessments.

First, the board reviewed the survey map submitted by the Taxpayer. The board noted that the notation "3.5 acres" was apparently handwritten on the plan by someone other than the preparer. The board calculated the area and agrees with the Town's calculation of 3.9 acres as the correct size of the Property.

Next, regarding the Town's method of assessing the land, the Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties with lake frontage in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The board has reviewed the assessment-record cards submitted by both the Taxpayer and the Town and finds the Town's method appears to be consistently applied (with property specific adjustments made for various factors) with the exception of Taxpayer's comparable #2 (Antoniewich) which may Page 3
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have been underassessed (this property has only 30 feet of water frontage and is an irregularly shaped lot). However, the possible underassessment of one property does not prove overassessment of the Taxpayer's Property. See appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id. Further, the Town made a 50% adjustment to the base value for the subject Property to account for its topography (same adjustment made to abuttor, Taxpayer's comparable #9) and also made a 21% adjustment (x .79) for excess frontage.

In reviewing the sales, the board finds the Kindrick sale (Taxpayer's

comparable #1 and Town's comparable #2) to be most similar to the subject in size and water frontage. The Kindrick property sold for \$550,000 in December 1996 and the building was razed and a new home is currently under construction.

While the Kindrick property has more water frontage than the subject, the subject has more land area. The Kindrick land assessment is over \$100,000 more than the land assessment of the subject.

The Dolan property (Taxpayer's comparable #3) sold in November 1993 for \$410,000. This property has 193 feet of water frontage and 1.32 acres of irregularly shaped land. The Taxpayer's Property is clearly superior to the Dolan property in size, water frontage and configuration of the lot.

The Tychsen property (Town's comparable #6) sold in October 1997 for \$510,000. This property has a small lot (.40-of an acre) and 100 feet of water frontage. This sale is an indicator of what the market will pay for lake front property.

The board did not consider the Carroll sale (Taxpayer's comparable #6) to be an arm's-length transaction based on both the Taxpayer's and the Town's testimony; therefore, the board has not considered this sale in its analysis. Further, based on the testimony and the sales evidence received at the hearing, it appears the Town's assessment is low.

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The board also did not consider the Cook sale (Taxpayer's comparable #8) because this property did not have water frontage (only lake access), there were significant other sales to consider with lake frontage, and the board found this property was in no way comparable to the subject.

The board finds the sales of properties on Lake Sunapee clearly support the assessed value placed on the Property. Lake properties are selling for a

premium, and many properties are being purchased with the intent of razing the older existing buildings and constructing significantly more exclusive homes. In fact, both parties agreed that the Property has a higher market value without the improvements on it. Because of its size, water frontage and configuration, the Property has privacy and has several opportunities to situate a house with septic and well issues on the land that most properties on the lake do not enjoy. While the board finds the Taxpayer's wish to be good stewards of the land to be commendable, the board must look at the Property's highest and best use and what a reasonable buyer would pay for the Property.

The Taxpayer raised concerns about certain errors in the assessment. However, the Taxpayer did not show these errors resulted in disproportionality.

"Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The Taxpayer raised concerns about the high amount of taxes on the Property. The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See generally International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor, i.e., the board decides if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See The

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Company v. Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Diane Heller, Agent for Mitchell Heller (Deceased) and Rheta Heller, Taxpayers; and Chairman, Selectmen of Newbury.

Date: September 11, 1998

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayers'" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

Regarding the specific points raised by the Taxpayers in the rehearing request, the board responds as follows:

1) The burden is on the Taxpayers to prove the 1996 assessment (the year of appeal to the board) is disproportionately high or unlawful resulting in the Taxpayers paying a disproportionate share of taxes. The evidence presented at the hearing did not indicate the 1996 \$485,890 equalized assessment (\$490,750 ÷ 1.01 1996 ratio) was excessive.

2) The board did reexamine certain comparables at the Taxpayers' request. The board's opinion did not change for the following reasons:

a) Comparable #4 was an estate sale of a significantly smaller lot

(.44 acre) in a less desirable, more congested location. The board did not find this sale to be comparable to the subject's size, frontage, lot configuration and location.

b) Comparable #7 was also a significantly smaller lot (.5 acre) in a less desirable, more congested location, had steep topography, no direct parking on the lot, access problems and no well. This property is also not comparable to the subject.

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c) Comparable #8 is not a waterfront property but has a deeded right of way to the lake. This property is not comparable to the subject which has substantial water frontage and is three times larger.

d) Both the Taxpayers and the Town testimony indicated that comparable #6 was not an arm's-length sale as concessions were made in the selling price (originally marketed at \$450,000) to make the property available to young people on the lake. Further, the lot is substantially smaller (.80 acre) than the subject and its access is through another lot.

3) In determining whether the assessment is fair and proportionate, the board must consider all the evidence. In this case, sales of comparable properties indicated the assessment was reasonable. The board found the Kindrick sale (Taxpayers' comparable #1 and Town's comparable #2) which sold for \$550,000 in December 1996, to be most similar to the subject. The Kindrick property has 2.46 acres (compared to the subject's 3.9 acres) and has 430 feet of water frontage compared to the subject's 366 feet. Kindrick's land assessment was the same both before and after its sale (\$479,100) which suggests the greatest value in the property is its land value. Further, the \$536,530 1998 assessment reflects a value for a new building under

construction. Once the building is completed, the assessment will increase. The Taxpayers' \$378,650 land value (at \$100,000 less than Kindrick's) for a lot comparable in size, frontage and location to the Kindrick lot is not excessive.

4) Lastly, as the board indicated in its September 11, 1998 decision, the 1996 assessment when compared to other sales on Lake Sunapee; specifically the Taxpayers' comparable #3, a 1.32-acre irregularly-shaped lot with 193 feet of frontage, which sold for \$410,000 in November 1993, and the Town's comparable #6, a significantly smaller lot (.40 acre) with only 100 feet of frontage which sold for \$510,000 clearly indicate that the market is paying a premium for lakefront property and supports the assessment on the subject.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Diane Heller, representative for the Taxpayers; and Chairman, Selectmen of Newbury.

Date: November 6, 1998

Valerie B. Lanigan, Clerk

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