

Mark Chronis

v.

Town of Pittsburg

Docket No.: 17836-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$487,800 (land \$288,800; buildings \$199,000) on a 21.3-acre lot with a single-family home (the "Property"). The Taxpayer also owns, but did not appeal, a 1.34-acre lot with a single-family home assessed at \$140,500. 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 that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) after being on the market for ten years with three separate brokers, the Property was purchased in an arm's-length transaction for \$295,000 in October 1997;
- (2) a July 1997 appraisal (Gallus appraisal) estimated the market value to be between \$300,000 and \$350,000 (Ms. Gallus advised by letter of April 17, 1998, her opinion of value would not change as of April 1998);
- (3) the rear land is wet, 'bony', has a power line running through it and will not accommodate subdivision;
- (4) a review of comparable properties proves the Property is overassessed;
- (5) the large, white conventional building ("white hall") is vacant, not winterized, has bat infestation in the roof, the studs are rotted off the sill, the roof leaks and has severe water damage in the entire back ell;
- (6) the dock, constructed sometime in the 1950's, is in disrepair and unusable; and
- (7) the market value as of April 1998 was \$370,000.

The Town recommended revising the assessment to \$450,000 and argued the revised assessment is proper because:

- (1) the Town was revalued in 1991 by Apple Appraisal; when it reviewed the Town's assessments in 1998, Avitar Associates determined the Property was properly assessed;
- (2) the time adjustment of the one First Connecticut Lake sale in the Gallus appraisal appears excessive and should be lowered to 10 and 12%, which would support the revised assessment;
- (3) a review of two other recent sales, although much smaller in size, indicate the general prices being paid for waterfront properties;

- (4) the purchase of the Property in 1997 may not have been at market value; and
- (5) although individual components (i.e., land, “white hall”) may be either under or over assessed, the revised (\$450,000) assessment as a whole appears reasonable.

The parties agreed that the department of revenue administration’s (“DRA”) 1998 equalized ratio of 1.10 is a reasonable estimate of the Town’s general level of assessment within the community. The parties also stipulated that the Taxpayer’s other, nonappealed property in the Town was fairly assessed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$413,050 (land \$262,600; buildings \$150,450). This revised assessment is based upon an April 1, 1998 market value finding of approximately \$375,000 and a revision to the assessment to recognize some of the physical features of the Property not adequately considered in the original assessment. This appeal also raised the issues of the possible need for a town-wide reassessment. This issue is addressed in the final section of this decision.

Market Value

The Taxpayer testified the Property was purchased in October of 1997 for \$295,000. While this is some evidence of the Property’s market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). In this case, the board finds the purchase price was under market. The Property was previously owned by an older couple (the Joneses) and had been marketed at various prices significantly higher than either the purchase price or the assessed value. After the death of Mr. Jones, however, Mrs. Jones eventually sold the Property to the Taxpayer for \$295,000. It has been the board’s

experience that sales occurring after the death of one of the owners often result in a lower price. In this case, the sale price of \$295,000 is lower than both the Gallus appraisal estimate and the Taxpayer's market value opinion of \$350,000.

The board also reviewed the Gallus appraisal and gives it some, although not conclusive, weight primarily because of the lack of truly comparable sales. Given the relatively unique nature of the Property and the few number of sales of similar properties, the Gallus appraisal estimated a value range of \$300,000 to \$350,000. The board notes, and agrees to some extent, with the Town's comment that the time adjustment for the June 1989 First Connecticut Lake comparable (Comparable #3) may be excessive. However, even tempering the time adjustment to some extent, the other two sales on different "wilderness lakes," provide some indication that the Town's assessment is excessive.

The board also reviewed the two sales submitted by the Town of small lakefront properties and is unable to give any weight to the Town's conclusion that those sales, in a general fashion, support the assessed value. The sales involved small lake lots of one-third to approximately one-and-one-half acre in size with a single dwelling improvement. Consequently, it is difficult to make any meaningful comparison to the Property which consists of over 21 acres with multiple improvements and significantly more water frontage.

Taking all these factors into account (the several indications of market value and considering the unique nature of the Property and the limited comparable sales available), the board concludes an estimate of market value of \$375,000 is appropriate. Applying the Town's 1998 equalization ratio of 1.10 to the market value estimate of \$375,000 results in an indicated

assessed value of \$412,500 ($\$375,000 \times 1.10$).

Revised Assessment

The board also considered the Taxpayer's testimony regarding the physical condition of both the land and the improvements, and, based on that evidence, has adjusted the following assessment components to result in a revised assessment of \$413,050. This assessed value, when equalized, indicates a market value of approximately \$375,000 ($\$413,050 \div 1.10$) for the Property as a whole. The land and improvements adjustments are presented below.

Land

Upon considering the assessment-record cards of other properties with multiple improvements (e.g., the "Applegate/Oas," "Falton" and "Feltmate" properties) and photographs of the Property, the board concludes the primary site consideration factor should be reduced from 3.25 to 3.00. This reduction recognizes both the exceptional view from the Property, its general open, grassy condition and the relatively fewer number of improvements and developed sites relative to the comparables. Further, based upon a review of the assessment-record card of the adjoining "Falton" property and the general description of the topography, condition and configuration of the rear land, the board reduces the condition factor on the 20.86 acres from 1.00 to .80. These two adjustments collectively reduce the indicated land assessment to \$262,600.

Improvements

The board has increased the depreciation on the "white hall" from -35 to -60 percent resulting in a revised assessment for this structure of \$73,200. It is clear from the description and the photographs this building has suffered significant deferred maintenance and its large size

constitutes an over-improvement relative to its utility.

Last, based on the photographs submitted and the Taxpayer's description of the dock, the board finds the dock, as it existed on April 1, 1998, was of little or no value. The Taxpayer testified he has not used it in the past year and has filed an application with the department of environmental services ("DES") to construct a new dock. Based on the Town's testimony and a review of the assessment-record card, the right for the owners to have a dock on First Connecticut Lake, subject to DES regulations, is reflected in the land value.

The sum total of these revisions result in a total improvement value of \$150,450. The revised land-and-improvements assessments result in a total revised assessment of \$413,050.

If the taxes have been paid, the amount paid on the value in excess of \$413,050 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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.

Need for Town-Wide Reassessment

Finally, the board notes its concern that there may be a need for a reassessment or an update in the Town of Pittsburg. According to the Town's representative, Gary Roberge, the Town was last revalued in 1991 in response to the Order for Reassessment (Docket No.: 0130-89). Certainly, the time elapsed since the last reassessment and the general change in the real estate market during that time raises the question about the need for a reassessment. Mr. Roberge testified that some of the methodology used by the firm that performed the last reassessment appears to be inconsistent, and while the bottom line values did not appear to be dramatically out of line, the market would recognize different land-to-building relationships than those resulting from the 1991 reassessment methodology. Mr. Roberge further testified that he had been engaged by the Town to perform an update for 1999; while one was performed, the resulting values were not implemented by the Town. While the board certainly does not have enough evidence to judge the wisdom of not implementing the results of such an update, it encourages the Town to revisit the concept of performing a complete reassessment or an update.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Mark Chronis, Taxpayer; Gary Roberge, Representative for the Town of Pittsburg; and Chairman, Board of Selectmen of Pittsburg.

Date: June 19, 2000

Lynn M. Wheeler, Clerk