

Karen Green

v.

Town of New Castle

Docket No.: 18554-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$3,403,400 (land \$2,002,500; buildings \$1,400,900) on a 1.150-acre lot with a single-family home (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, 38 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) an appraisal prepared by Stephen Traub, A.S.A., estimates the Property’s April 1, 2000 market value between \$2,500,000 and \$2,700,000 (“Traub Appraisal”);
- (2) the improvements should be graded A7 or A8 as the exterior of the original house has not

been updated. The exterior wood shingles are original as are 50% of the windows. More than one-third of the significant components of the home are over 30 years old. The house is built almost entirely on ledge and has a small basement;

(3) the Property is improved with a contemporary-style residence built in the 1960's.

Contemporary dwellings located along the seashore are less desirable and more difficult to market than traditionally-styled dwellings and a 5% reduction for functional obsolescence (to quality rating of A7 or A8) should be applied;

(4) the dwelling is situated much closer to the shoreline than neighboring properties, reducing the amount of privacy the Taxpayer has in comparison to her neighbors;

(5) the Property's driveway is shared with three other properties (See Taxpayer Exhibit 1, page 11) with approximately 7,000 square feet of land area that is essentially unuseable and of little value. There is a large outcropping of ledge in front of the house that interferes with the Taxpayer having full use of her waterfront;

(6) compared to similar quality lots with comparable waterfrontage and location, the land's condition factor should be no higher than 600 with a 5% reduction for the ledge and 10% reduction for shape, easement and lack of privacy;

(7) multiplying the market value estimate by the Town's 2000 equalization ratio of 1.04 yields an equitable assessment of between \$2,634,000 and \$ 2,768,500.

The Town argued the assessment was proper because:

(1) the home is one of the largest and highest quality dwellings in the neighborhood and while it

may have some of its original exterior features, they have been well maintained;

(2) after the Taxpayer purchased the Property, she completely renovated the interior of the house over the next several years;

(3) the Property is the second largest in the neighborhood and is one of only four lots to have a lot size greater than one acre. The Property's 185 feet of ocean frontage is some of the best in the neighborhood;

(4) the 12% depreciation adjustment given on the assessment-record card includes an allowance for the dwelling's age, condition and grading; and

(5) the location of the house on the site does not negatively affect the value of the Property.

Subsequent to the hearing, the board took a view of the Property. The board viewed the exterior and some of the interior of the house as well as the shoreline of the Property and the shared driveway. Additionally, the board walked the shoreline in front of several of the abutting properties and drove through the neighborhood on Little Harbor Road. The board did not view the interiors of any of the neighborhood properties.

The parties stipulated that the Town's 2000 level of assessment was 104%.

Board's Rulings

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

At the hearing, the Taxpayer's arguments centered around the two components of the assessment: the value of the land and the value of the improvements. The board will address each of these components separately.

Land Value

As is frequently the case with high quality waterfront properties, the value of the land component of the Property's assessment is more than the value of the improvements. This is true despite the Property's substantial dwelling containing more than 7,600 square feet of gross living area above ground and a total of more than 12,000 square feet of improvements when the garage, basement, storage area, decks and porches are included. The value of oceanfront land follows closely the economic law of supply and demand. Because the supply is very limited and the demand is high, the resulting values are significantly greater than for similarly sized non-oceanfront land. The Taxpayer acknowledged the site has a substantial value, however, argued the assessment was too high for several reasons: 1) the Property shares a driveway with other properties and has approximately 7,000 square feet of unusable land along the side of this shared driveway; 2) the dwelling is situated closer to the shoreline than the neighboring properties, reducing the amount of privacy; and 3) there is a large outcropping of ledge that diminishes the Taxpayer's utilization of the waterfront area. The board will address each of these issues individually.

First, the Taxpayer argued the Property's shared driveway reduces the amount of privacy the Property enjoys. Further, approximately 7,000 square feet of land along the side of the driveway, is essentially unusable and diminishes the effective area of the site. The board, on its view, noted the Property is the last property on the shared driveway and the 7,000-square-foot area, while not available to be built upon, has been substantially landscaped forming a buffer between the Property and the abutting property to the south, thereby providing some privacy to the Taxpayer. The two properties the Taxpayer must drive by before arriving at the Property are

both high-quality non-waterfront homes that are professionally landscaped and the board finds they are not detrimental to the value of the Property.

Second, the Taxpayer argued the location of the dwelling, close to the shoreline rather than being set back, as are the more recently built neighboring waterfront properties, negatively impacted the Property's value. The board disagrees. The Property was one of the earlier, if not the earliest, dwellings constructed in this area and was the primary lot from which many of the other lots were subdivided. The abutting waterfront properties, facing more development restrictions due to the enactment of the Shoreline Protection Act (RSA Chapter 483-B), were built further from the shoreline. The Property was built near the shoreline prior to the enactment of the Shoreline Protection Act and its proximity to the shore provides the Taxpayer the benefit of being able to hear the surf and its views are unrestricted by other dwellings.

Third, the Taxpayer argued the large outcropping of ledge along the Property's shoreline restricts the Taxpayer from having full utilization of the waterfront area. On the view, the board noted the ledge outcropping was situated near one end of the Property's almost 200 feet of ocean frontage. The ledge acts as a deterrent to pedestrian traffic along the front of the Property adding to its privacy and has been pleasantly incorporated into the decking area outside the kitchen. It appears that when the lot was subdivided, the placement of the lot line at the ledge was done to take full advantage of the screening and privacy the ledge provides to the balance of the frontage - the excellent beach area. Additionally, the board walked the shoreline in front of several of the abutting properties and noted that, while they may have had an equal or greater amount of waterfront, the quality of their beach area was no better, and in some cases, of lesser quality than the Property's. In fact, because of the setback of the improvements of the adjoining properties

and the lack of any lateral beach screening between the properties (as opposed to the Taxpayer's ledge), we conclude the Taxpayer's lot is superior to the adjoining lots (and specifically the sale of the vacant lot at 101 Little Harbor Road) due to the synergy of the excellent beach and the privacy provided by the ledge. The board concludes the land portion of the assessment is low by approximately \$300,000. This is based on comparing the assessments of the adjoining lots and adjusting the sale of 101 Little Harbor Road for: 1) its inferior privacy and beach; and 2) its unimproved state at the time of the sale versus the significant site improvements of the Property (extensive landscaping, driveway, etc.). We find, based on our view and experience, the \$30,000 site improvements contained in the Traub Appraisal grossly underestimate their contributory value.

Building Value

The Taxpayer argued the improvements were overassessed for several reasons, including: 1) the house is an older, contemporary-style dwelling; 2) there is only a small basement area under the house as it is built almost entirely on ledge; and 3) the improvements should be graded at A7 or A8 as the exterior of the house has not been updated since it was built and has the original siding and 50% of the original windows.

The board agrees, based on its view of the Property and the neighborhood houses and the testimony of the owner that the Town's quality grade of "A9" overstates the improvement's quality. Revising the grade to an "A8" reduces the assessed value for the dwelling by approximately \$300,000.

However, we do not agree that the market would significantly discount the improvement's value for its style or lack of basement. The dwelling's contemporary style, while

different than the surrounding properties, is not so out of keeping with the surroundings that it would have a significant chill on its marketability. The Taxpayer's purchase of the Property in 1994 and subsequent substantial additions, renovations and site work is some evidence of the Property's desirability. The dwelling does have a small (200 square feet±) basement area. However, the functionality of the dwelling is not seriously affected for several reasons: 1) the mechanicals are readily accessible in the crawl space area (as seen on the view); 2) the Town's cost approach does not add for any basement area (except the 200 square-foot area); and 3) the storage utility a basement provides has been addressed by the oversized (2,012 square feet) garage area.

Consequently, we find any possible overassessment of the dwelling component is offset by the possible underassessment of the lot.

In the Traub Appraisal and during his testimony, Mr. Traub made some calculations and statements, including some adjustments to the Town's calculations, to support his estimate of the Property's market value of between \$2,500,000 and \$2,700,000. The board finds for the reasons previously discussed, these calculations and adjustments to be unpersuasive.

For the above reasons, the Taxpayer failed to show the Property was disproportionately assessed and the appeal is denied.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Karen Green, Taxpayer; and Chairman, Selectmen of New Castle.

Date: October 10, 2002

Anne M. Bourque, Deputy Clerk