

John P. Sherman 1994 Revocable Trust

v.

Town of Moultonborough

Docket No.: 18620-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$517,400 (land \$427,500; buildings \$89,900) on a 0.650-acre lot with a single-family home (the “Property”). The Taxpayer also owns but did not appeal a vacant parcel of land identified as Map 28, Lot 68 assessed at \$5,600. Both parties agreed that the non-appealed lot was reasonably and consistently assessed as a “back lot” to the Property under appeal. 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the building is obsolete (because of its age and condition) and a prospective purchaser would likely remove the improvements and replace them with a more substantial structure;
- (2) the land value is too high compared to other properties in the neighborhood;
- (3) the lot is serviced by a private road which crosses the lot, thereby reducing the usable portion of the lot to approximately .53 acres; and
- (4) averaging the sale prices of several lists of comparable sales submitted by the Town or the Taxpayer results in a range of time-adjusted values from \$422,000 to \$474,000.

The Town argued the assessment was proper because:

- (1) the Taxpayer's assessment was arrived at as a result of a town-wide assessment update performed for tax year 2000 during which 500-600 sales were analyzed to revise market values for all properties in Town;
- (2) for tax year 2000, the Town applied a 5% adjustment factor for the private road encumbering the lot; however, because the Taxpayer is the next to the last property on the road, the Town later determined such an adjustment is not warranted and was not provided to other adjacent property owners; therefore, the adjustment was removed for subsequent tax years;
- (3) while the improvements may be torn down by a subsequent purchaser, they have some value and allow any future structure's placement to be grandfathered, thereby retaining the improvement's proximity to the lake;
- (4) the Property has a sandy beach;
- (5) many of the comparables submitted by the Town and the Taxpayer are smaller and as a result, require adjustments to the site value; and

(6) the Property's location near the end of the road affords it more privacy than many of the comparables sales presented by the Taxpayer.

Board's Rulings

The board finds the Taxpayer failed to prove the Property's assessment is disproportionate. The board has reviewed the sales submitted by the Town and the Taxpayer and finds, as the Town stated, many of the sales are of lots smaller than the Taxpayer's and are inferior due to location or the lack of a sandy beach. Moreover, the Taxpayer's method of averaging the sale prices of his comparables does not establish the market value of the Property.

Averaging sales, as done by the Taxpayer, is not a conclusive method of establishing market value since averaging ignores the unique characteristics of properties. Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject Property arrives at the best indication of market value.

The board finds the sales submitted by the Town adequately support the assessed value. Further, the sale of the adjoining property (Map 28-65 and 66) for \$612,500 in August 2001, generally supports the Town's assessment. The Taxpayer attempted to adjust the sale of the adjoining property by time, the amount of acreage and front feet to support its proposed assessment; however, the board finds this argument fails because the Taxpayer overstated the value of the additional front feet. The board has compared the photographs and assessment-record card description of the Property with those of the adjoining parcel and finds that a portion of the Taxpayer's frontage contains a partial sandy beach in contrast to the adjoining parcel's frontage being entirely rocky. Additionally, at the time of the sale, the improvements on the adjoining parcel were significantly inferior (assessed value of \$38,200) to the Taxpayer's

improvements (assessed value of \$89,900).

In short, the board finds the Property's relatively private location, the improvement's proximity to the waterfront, the topography (at-grade) and the sandy beach area all support an assessment higher than that argued by the Taxpayer utilizing the averaging approach.

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

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: John P. Sherman, Trustee for the Taxpayer; Mary Pinkham-Langer, representative for the Town; and Chairman, Selectmen of Moultonborough.

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Date: September 12, 2002

Anne M. Bourque, Deputy Clerk

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