

Dana and Jane Merrithew

v.

Town of Rumney

Docket No.: 19486-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$255,250 (land \$90,400; buildings \$164,850) on a 9.92-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in 1994 for \$130,000;
- (2) some improvements (a dormer and a barn) have been added since the purchase;

- (3) as part of a town-wide reassessment in 2002, the assessment initially increased dramatically to \$282,250 (an 82% increase);
- (4) the Taxpayers obtained an appraisal estimating a market value of \$175,000;
- (5) to correct a “math error,” the assessment for tax year 2002 was reduced to \$255,250 in November, 2003;
- (6) the Property fronts on the Baker River and comparables on the river with similar open fields are assessed for less;
- (7) approximately two thirds of the Property is subject to flooding, because it is in the 100-year flood plain;
- (8) while the Property has riverfront, the Baker River does not confer the high value of other riverfront land because of its mostly steep and rocky river bank;
- (9) Route 25 is a state highway (posted at 55 miles per hour) which makes the Property’s location less private and quiet than the comparables;
- (10) the assessment should reflect a market value no higher than \$200,000; and
- (11) the Town made adjustments to other Baker River properties in 2003, but not in 2002.

The Town argued the assessment was proper because:

- (1) the Property is unique and its value is for an estate and horse farm, a use generally unaffected by the occasional flooding;
- (2) the Property is the “nicest” in the Town on the Baker River;
- (3) the Taxpayer’s appraisal is “worthless” because of the questionable comparables utilized, none of which are in the Town, all of which are smaller and the sales are from 2001, before the current rapid market appreciation;

(4) in addition, several of the appraisal comparables are one-story rather than two-story buildings like the Property;

(5) the Town's comparables are more appropriate and are situated on the other side of the Baker River;

(6) in some cases, river frontage was not recognized or assessed in 2002 because of steepness and access issues in the comparables used by the Taxpayers; and

(7) the best comparable (Town Comparable #6) is 15.7 acres and sold in July, 2003 for \$400,000.

The parties agreed the Town's 2002 general level of assessment approximated market value as indicated by the department of revenue administration's 2002 weighted mean ratio of 100%.

Board's Rulings

After a review of the sales and assessment comparables submitted by both parties, the board concludes, for the following reasons, the Taxpayers are proportionally assessed at \$255,250 for tax year 2002.

The Taxpayers' primary argument is that the land portion of the assessment at \$90,400 is excessive for a number of reasons: 1) approximately two-thirds of the acreage is in the 100-year flood plain and is subject to periodic flooding during spring melt and heavy rainfall; 2) the Property fronts on Route 25, which is a heavily traveled state highway and has less privacy than many of the comparables; 3) both the independent appraisal estimating a market value of \$175,000 and the comparison to other Baker River comparable assessments indicate the land is overassessed.

After reviewing the three sets of comparables submitted by the parties, we find the land assessment is a reasonable estimate of its contributory value to the Property's overall value.

First, the Taxpayers' appraisal contained three comparables for which the assessment-record cards and photographs were submitted by the Town. After comparing the adjustments to the comparables in the appraisal with the assessment-record cards and photographs, the board agrees with the Town that these comparables are generally inferior to the Property, were located in other municipalities and were not adjusted adequately in the appraisal to provide a reliable indication of market value.

Second, the Taxpayers submitted a number of Town properties with frontage on Baker River which in many instances indicated lower assessments on both the land and the buildings. The board finds the land of the Taxpayers' assessment comparables were underassessed for tax year 2002 and were recognized as such by the Town and adjusted to be more in keeping with market value in tax year 2003. The fact that some properties may have been underassessed does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). The Town took the appropriate course of action by adjusting the assessments once it recognized the market had changed significantly for properties with Baker River frontage. RSA 75:8, I requires that selectmen "shall [annually] adjust assessments to reflect changes so that all assessments are reasonably proportional"

Third, the Town submitted a number of sales of properties with Baker River frontage. Three sales (Map 12, Lot 6-33; Map 12, Lot 6-31; and Map 12, Lot 6-30) sold in 2002 and 2003 in a range from \$190,000 to \$205,000. All these sales are on smaller lots, generally of inferior land and Baker River frontage and have smaller dwellings than the Property. Consequently, these three sales clearly indicate the Property with more acreage, open fields, more accessible frontage on Baker River and larger improvements is worth more than the \$200,000 market value argued by the Taxpayers. Further, while the sale of a similar 12.2-acre parcel with Baker River

frontage (Map 12, Lot 7-29) occurred two tax years subsequent, its \$120,000 sale price for similar Baker River flood plain land is some general support of the Town's assessment of \$90,400 for the Taxpayers' land.

The board finds the Town did recognize the periodic flooding aspect of approximately two-thirds of the Property by giving a -20% market adjustment in its land assessment calculation. While flooding of certain portions of the Property is a factor affecting its value, its frequency and the seasonal use of the flood plain areas extensively mitigate the flooding's negative effect. The Taxpayer testified flooding has occurred only four times in the ten years they have owned the Property and occurs largely in the spring due to ice jams or accelerated snow melt and rainfall. Thus, the horse pasture use and river recreation access the flood plain land provides during summer months is not significantly impacted by the flooding. The positive factors mentioned above would be recognized by the market and, thus, the assessment must also. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (Municipalities must consider all relevant factors in assessing property.)

Further, the board acknowledges the Property does front on a state highway, Route 25, and is likely to be less private generally than many of the comparables which are located on less traveled town-maintained roads. However, a review of the Town's photographs and the aerial photos indicates the improvements are well screened from Route 25 and set approximately 75 to 100 yards off the highway providing a relatively private and secluded setting.

The board also reviewed the assessment of the Property's improvements vis-à-vis the comparables submitted by the Taxpayers and concludes the differences in assessment attributed by the Town are reasonable due to the different size, quality and age of the improvements. For example, the Taxpayers' actual calculated living area is 2,477 square feet while the three

comparably-assessed properties (Valdmanis, Poitras and Bruce) all have lesser living area square footages that range from 1,512 to 2,038. Similarly, the garage and barn outbuildings of the Taxpayers on the Property, as indicated on the assessment-record card, are generally of better grade and condition than some of the comparables' improvements.

Regardless, however, of this comparable assessment comparison, disproportionality is only established if a taxpayer is assessed at a higher percentage of market value than the percentage generally assessed throughout the taxing jurisdiction. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). In this case, we find the total value (land and improvements) of \$255,250 is a reasonable estimate of the Property's market value based on the sales discussed earlier in this decision.

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(f). 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 a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dana and Jane Merrithew, 2450 Rumney Route 25, Rumney, New Hampshire 03266, Taxpayers; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, Rumney, New Hampshire 03266.

Date: March 2, 2005

Anne M. Stelmach, Deputy Clerk