

Robert L. Wheaton

v.

Town of Rumney

Docket No.: 19508-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$383,400 (land \$331,950; buildings \$51,450) on a 9.94-acre lot with two seasonal camps (the “Property”). 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 the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer, represented by his daughter Nancy Wheaton Merson, argued the assessment was excessive because:

(1) the Taxpayer first purchased a parcel of land consisting of 4.2 acres in 1956;

- (2) he purchased an additional 5.5 acres in 1964 and exchanged a small piece of land with a neighboring owner (Baumgartner) to adjust a boundary line;
- (3) based on a compilation of deed descriptions and earlier plans, a plat of the Property was produced by Kevin L. French, licensed New Hampshire surveyor, in February 2003 which indicates the total acreage approximated 9.94 acres;
- (4) comparisons to other, more accessible waterfront land were prepared, but have not been presented because of time constraints;
- (5) the Property cannot be further subdivided;
- (6) an appraisal prepared as of May 28, 2004 estimated the value of the Property at \$350,000 for a later year tax abatement;
- (7) the building assessment is not in dispute; and
- (8) the market value of the Property did not exceed \$300,000 as of April 1, 2002.

The Town recommended the assessment be revised to \$351,850 (land \$300,400 and building \$51,450) to reflect corrections in the land portion of the assessment. The Town argued the revised assessment was proper because:

- (1) the Property can be subdivided and already has two houses on it;
- (2) there is more than adequate road frontage for subdivision potential;
- (3) the Taxpayer's appraiser gives very little value to the extra acreage on the Property and relied on three properties of smaller size in different towns and on different lakes;
- (4) the market was appreciating at a rate of 10% to 12% per year in the relevant period; and
- (5) because of an error concerning excess and undeveloped land on the assessment-record card, the Town corrected the acreage to 9.94 acres and made appropriate adjustments for topography and other factors.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$341,000 (land \$289,550; buildings \$51,450). This assessment is based on incorporating the Town's corrections to the assessment addressed at the hearing and applying an additional 5% topography adjustment based on the description of the steepness of grade and the juxtaposition of the two cottages near the waterfront.

The Taxpayer's daughter testified that, due to the steepness and physical constraints of the waterfront area, the second cottage added by her brother is located behind the existing cottage, rather than adjacent to it along the waterfront. Thus, the fact there are two cottages near the waterfront does not contribute as much in value as if each had its own separate area of view and access to the water. Also, modifying the topography adjustment factor to 90% is consistent with what the Town applied to the adjacent property owned by the Baumgartners. This waterfront-related topography adjustment does not affect or reduce the subdivision potential afforded by the road frontage. Without ruling on the feasibility or practicality of development/subdivision potential of the road frontage as argued by the Town, the board finds the Town's land valuation adjustment factors ("topo adj.," "excess" adjustment and "undev" adjustment) inherently attribute some potential subdivision value to the 769 feet of road frontage.

The board gives some weight to the Taxpayer's 2004 appraisal, but finds its market value indication needs to be adjusted further for the fact that, as the Town pointed out, the comparables are generally inferior to the Property and on other water bodies. While the board is unable to quantify what the appropriate adjustments to the comparables might be, we find, considering the additional upward adjustments needed and the market appreciation that occurred between 2002

and 2004 (the Town testified an annual rate of 10% to 12%), the board's revised assessment of \$341,000 is generally supported by the appraisal.

In summary, the board finds the revised assessment of \$341,000 accounts for the development/topography issues of the Property and gives some weight to the Taxpayer's (two-year subsequent) \$350,000 appraisal estimate.

If the taxes have been paid, the amount paid on the value in excess of \$341,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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: Robert L. Wheaton, 31 West Shore Road, Hebron, New Hampshire 03241, Taxpayer; Nancy Wheaton Merson, 930 Blue Heron Avenue NE, Bainbridge Island, Washington 98110, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of Rumney, Post Office Box 220, Rumney, New Hampshire 03266.

Date: March 4, 2005

Anne M. Stelmach, Deputy Clerk