

Donald E. and Suzanne G. Medbery

v.

City of Dover

Docket No.: 19609-02PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “City’s” 2002 assessment of \$77,100 on a 1.39-acre lot (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property was purchased on April 17, 2002 (shortly after the April 1 assessment date) for \$73,400 as a vacant, buildable lot;

- (2) due to certain environmental and other issues, the market value of the Property is well below the purchase price;
- (3) the Taxpayers made reasonable investigation prior to purchasing the Property and trusted the realtor involved in the transaction, who failed to make adequate disclosure of the environmental conditions;
- (4) the City has ignored the worsening odors and other adverse influences from the nearby landfills over the past five years;
- (5) the Taxpayers would not have purchased the Property had they known the true facts pertaining to the landfill and “Superfund” sites located nearby and have “taken action” against the seller’s broker because of these adverse influences on the value of the Property;
- (6) the Taxpayers had already agreed to sell their home in Massachusetts and were under some pressure to complete the purchase because of the need to start up their log home business;
- (7) the City’s comparables are not proper and are not adequately adjusted to reflect differences with the Property and Comparable #2 used by the City was not sold at an arm’s-length price because of extenuating family motivations on the part of the buyers;
- (8) the Property is subject to a conservation easement that restricts development which the Taxpayers were not aware of until they saw the deed; and
- (9) when all of these factors are considered, the value of the Property does not exceed \$25,000 to \$35,000 and the City should have granted an abatement for the “good cause” shown.

The City argued the assessment was proper because:

- (1) the parties agreed the level of assessment in the City was 92%;

(2) while there may be environmental factors in the vicinity of the Property that may be considered “obnoxious” to some or all people, this neighborhood has the lowest land base value in the City;

(3) the City Assessor personally investigated the Taxpayers’ concerns regarding adverse neighborhood environmental influences, including a site visit and discussions with a neighboring owner (of Comparable #2, 127 Glen Hill Road) and believes the assessments relative to other neighborhoods in the City are proper;

(4) there was and is a high demand for vacant land in the City and this is reflected in part by 127 Glen Hill Road, which was listed for \$75,900 in 2002 but sold for \$115,000 in June, 2003;

(5) all waterfront property, including the Property is subject to a conservation easement (because of the “Shoreline Conservation District”) and, on balance, this easement has no adverse effect on market value;

(6) proximity to the water is an amenity, not a detriment, and on “nice” days, the river is used for recreation (canoeing and swimming); and

(7) the Taxpayers failed to sustain their burden of proof.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayers sustained their burden of proving the Property was overassessed, but only to a limited extent. The appeal is therefore granted and the assessment for tax year 2002 is abated to \$67,500 (rounded), based on the purchase price of \$73,400 and the level of assessment of 92% stipulated to by the parties ($\$73,400 \times 0.92 = \$67,528$).

The Property was purchased by the Taxpayers in April, 2002 as a buildable lot for a price of \$73,400. See Taxpayer Exhibit 1.¹ The Taxpayers indicated they were under some pressure to complete the purchase because they had proceeded with the sale of their own home in Massachusetts and needed to acquire a lot and begin construction to establish their log home business.

The Property is one of three contiguous lots listed for sale in March, 2002 in the MLS directory for \$69,900. Id. The Taxpayers intended to purchase another lot from the same developer but, because of certain problems with that lot, ultimately purchased the Property on April 17, 2002 for \$73,400, an amount higher than the listing price.

The Taxpayers argued, in effect, they overpaid, both because of their own pressures to purchase and because they were unaware of the full extent of certain environmental issues, including the location of the Property close to an aggregate plant, the “old Dover dump” (the Dover Municipal Landfill on Tolend Road), and the “largest landfill in the state” (the Rochester Turnkey Landfill). Id. In addition, they maintained the river frontage diminished rather than added to value because of a 100 foot conservation easement and, more importantly, the noxious smells sometimes emanating from the river and the refuse visible when the river is frozen. Id.

The board has considered the evidence carefully and, in addition, took a view of the Property’s location and the nearby environmental sites mentioned by the Taxpayers. The board is unable to conclude, however, that the factors mentioned diminish the value of the Property to the extent indicated by the Taxpayers, even if, as stated, they would not purchase their land for half the price, or at all, if they knew the true facts.

¹ This figure is supported by the HUD settlement statement included in the exhibit.

While the board does not doubt the Taxpayers' sincerity, the question is whether the Property has been disproportionately assessed in relation to its market value, not the Taxpayers' own feelings and beliefs regarding whether they would purchase the Property again at a lower price or at all. Notwithstanding the volume of documents submitted in Taxpayer Exhibit 1 and the Taxpayers' detailed testimony, they failed to present any appraisal or other evidence to demonstrate the value of the Property as of the assessment date was below the sale price.

When a sale is an arm's length transaction, the sales price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). While the board understands the Taxpayers' belief that they overpaid, the Property was on the market for only a short period of time and sold for more than the listing price, indicating considerable demand for a buildable lot in this location. From the board's view of the neighborhood and the City's presentation, it does not appear that the factors mentioned by the Taxpayers have inhibited residential development and construction in the neighborhood. For these and other reasons, the board cannot conclude the market value of the Property was below its sale price.

As noted by the City, the Cocheco River runs throughout the City and into the downtown area. The river is used for recreation and other purposes and proximity is generally considered an amenity, not a detriment. The City further indicated the base land value for the Property's neighborhood is the lowest in the City and this properly takes into account the adverse vicinity factors mentioned by the Taxpayers. The City further noted the 100 foot conservation easement is not unique to the Property, but is a requirement for all waterfront development because of regulations imposed by the State.

Generally, properties with a waterfront location have more value, even if a conservation easement exists. The Property consists of 1.39 acres with 90 linear feet of water frontage. There is no evidence the conservation easement had a negative effect on its market value.

The City presented an analysis, contained in Municipality Exhibit A, to the effect that, instead of being overassessed (as claimed by the Taxpayers), the Property was somewhat underassessed. According to the City's "Direct Sales Comparison Analysis," the Property's market value indication as of the assessment date is \$87,400 and the indicated assessment (applying the 92% median ratio) is \$80,400, slightly higher than the actual assessment.

The board, however, disagrees with this analysis and conclusion for the following reasons. The City relied primarily on only two sales (one being the Property itself) in its analysis. One sale at 127 Glen Hill Road was given a weighting factor of 0.4, compared to 0.5 for the Property and 0.10 for another sale. According to the Taxpayers, however, 127 Glen Hill Road was sold in June, 2003 under extenuating circumstances for a very high price (\$115,000) in a sale that was not an arm's-length transaction because it was to someone who needed to live close by her mother. Cf. Appeal of Lakeshore Estates, 130 N.H. at 508 (discussing what constitutes an "arm's length transaction" in real estate appraisal terminology). In fact, the same property was listed for sale at the time of the assessment for a much lower price (\$75,900). The City's emphasis on this sale (even with a time adjustment of 1% per month) to support a higher market value estimate for the Property is therefore questionable. This leaves the sale price of the Property, weighted at only 0.50 by the City in its analysis, as the best indication of the Property's market value.

The board will briefly address several other arguments made by the Taxpayers which cannot be sustained. For example, estimating the value of vacant land (1.4 acres) by presenting

sales of three larger parcels (consisting of 12 acres, 10 acres and 8.5 acres) and calculating the per unit (1.4 acre in this case) price for each sale is not appropriate primarily because when a larger piece of land is sold to construct a home, the primary developable acre (on which the home will be constructed) has a much higher value (and assessment) than any so-called “excess” acreage that may also be included. The latter methodology is in line both with how the market values property with larger acreage and with standard assessment practices.

In addition, and contrary to the Taxpayers’ arguments, the fact that assessments may increase at different rates (percentages), sometimes quite dramatically, is not proof of disproportionality. See, generally, Appeal of Town of Sunapee, 126 N.H. 214 (1985). Unequal percentage increases following a reassessment are practically inevitable since not all property appreciates at the same rate.

The City noted, for example, relatively strong market demand for buildable land which may help explain why the Property was listed and sold so fast for more than the listed price. RSA 75:8 requires each municipality to examine all real estate and reappraise those properties that change in value. Consequently, the fact the Property’s assessment may have increased by over 109% (as computed in Taxpayer Exhibit 1) is not probative that it was disproportionately assessed. For similar reasons, the fact that three lots, including the Property, were assessed for substantially less in prior years does not support a lower assessment. Cf. Appeal of Cannata, 129 N.H. 399, 401 (1987) (underassessment of others, even if supported by the evidence, does not prove overassessment).

In summary, and after weighing the conflicting evidence and arguments presented by the parties, the board finds the best evidence of market value in this case to be the Property’s purchase price (unadjusted by the alleged negative factors discussed by the Taxpayers).

Therefore, the board finds the Property is entitled to an abatement, but only to \$67,500, an amount reflective of the purchase price and the level of assessment in the City.

If the taxes have been paid, the amount paid on the value in excess of \$67,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Donald E. and Suzanne G. Medbery, 3 Covered Bridge Lane, Dover, New Hampshire 03820, Taxpayers; and Chairman, City Council, City of Dover, 288 Central Avenue, Dover, New Hampshire 03820.

Date: December 23, 2004

Anne M. Stelmach, Deputy Clerk