Souren and Jolene Alexanian

v.

Town of Alexandria

Docket No.: 19730-02PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2002 assessment of $372,600 (land $17,500; buildings $273,600; features $81,500) on a one-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted, but only to the abated value determined by the Town in its revised assessment discussed below.

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 assessment-record card overstated the size (square footage) of the house;

(2) the Property's base rate should be $60 per square foot, the same as a nearby, comparable property (Decesare), rather than the $100 per square foot applied by the Town;

(3) the Town's total assessment for the "Beach Lot" ($480,000) is too high;

(4) the Town's allocation of the total assessment for the Beach Lot to the six Bourbon Beach Association ("Association") lot owners is incorrect, because while the six lot owners have full rights to the Beach Lot, another two nearby lot owners have a deeded right of way to use it; and

(5) the two additional lot owners established their right-of-way over the Beach Lot through a Grafton County Superior Court action, but, to date, have not been taxed by the Town for their access to the Beach Lot. At the very least, those rights to access the Beach Lot should spread the allocation of the assessed value of the Beach Lot over eight rather than six owners;

Before the hearing, the Town revised the assessment to $313,500 and argued the revised assessment was proper because:

(1) a town-wide revaluation was performed for tax year 2002;

(2) after a physical inspection of the Property was performed in May 2004, the dwelling's area was corrected and the base rate was reduced from $100 to $85 per square foot to take the quality of construction of the dwelling into account and these adjustments result in revising the assessed building value down to $214,500 (from $273,600);

(3) while there may have been problems with the 2002 revaluation, lot assessments were handled consistently and equitably and the Town has resolved all of the other abatement requests it received for tax year 2002;

(4) adding the building lot land assessment of $17,500 to the Beach Lot allocated assessment of $80,000, when the total is equalized by the town-wide level of assessment of 96%, roughly equates to the $100,000 the Taxpayers stated was the land value; and

(5) the Taxpayers have failed to carry their burden of proof that the Property is entitled to a further abatement.

Subsequent to the hearing, the board took a view of the Property on August 20, 2004. The view included the Beach Lot and the surrounding properties that share the Beach Lot with the Property. The board did not inspect the interior of the Property's improvements but did view how the Property is situated with respect to the neighboring properties, the waterfront and Newfound Lake in general.

Board's Rulings

The Town abated the appealed assessment of $372,600 to $313,500 prior to the hearing. The board finds no further abatement is warranted below the $313,500 revised assessment.

Initially, the Taxpayers had four areas of concern regarding the assessment: 1) the total square footage of the dwelling; 2) the quality base rate for the dwelling; 3) the Beach Lot allocation; and 4) the quality of the water frontage.

Subsequent to the appeal being filed, but prior to the hearing, the Taxpayers and the Town resolved the first issue concerning the area of the dwelling. The Town testified that it reinspected the Property in May 2004 and adjusted the area accordingly.

The Taxpayers' second issue, the quality of the house, was also addressed by the Town. After inspecting the Property, the Town lowered the base rate from $100 to $85 per square foot to more accurately reflect the quality of construction in the dwelling. At the time of the inspection, according to Mr. Edward Tinker of Avitar Associates, the Town's contract assessor, the Taxpayers admitted the house was of "better quality construction" than neighboring properties and should therefore have a higher base rate value. See Taxpayer Exhibit 5; see also the photographs in Municipality Exhibit A and Taxpayer Exhibit 1. The Taxpayers failed to

carry their burden of establishing that an even lower base rate ($60 per square foot) was warranted.

The Taxpayers' third issue concerned how the value of the Beach Lot owned by the six Association owners was allocated. The Taxpayers contended the Town's allocation was incorrect in that it did not account for the fact that two additional property owners had deeded rights-of-way to use the Beach Lot to access Newfound Lake. The Taxpayers stated the allocation of the total value of the Beach Lot ($480,000) should have been spread over the eight owners that have use of the lot rather than just the six members of the Association. While there had been some previous dispute over who had the right to use the Beach Lot, the two right-of-way users succeeded in a Grafton County Superior Court case (Docket No.: 01-E-097) in having their legal interests in the Beach Lot recognized and to share in its use.

The Taxpayers contend increasing the number of lot owners should decrease the amount allocated to each lot (example: $480,000 ÷ 6 = $80,000 per lot, whereas $480,000 ÷ 8 = $60,000 per lot), thus lowering their assessment. This reasoning, however, assumes the Beach Lot was correctly valued and (after allocation of $80,000 for the Beach Lot) that the Property was overassessed.

The board does not agree with these assumptions for several reasons. As the Town noted, when the $80,000 allocated value is added to the building lot land assessment of $17,500, the overall land assessment is close to the Taxpayers' $100,000 estimate for the land value when the Town's 96% level of assessment is taken into account. After taking a view of the Property, the board concludes an attractive and accessible one-acre buildable lot, in a desirable neighborhood with direct views of the lake and rights to the Beach Lot for boating and bathing, would have had a total value of at least $100,000 as of the assessment date.

The focus of an abatement appeal must be on the proportionality of the assessment as a whole, not on how the Town allocated individual components, such as, in this case, the one-acre buildable lot and the "beach access" rights conferred in the Beach Lot. See, e.g., Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) ("a taxpayer is not entitled to an abatement . . . unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town").

Lastly, the Taxpayers argued the quality of the water frontage on the beach lot did not warrant an assessment of $480,000. They stated the entire waterfront area was not usable and that only about one half of the water frontage provided good access to the lake, the remainder being rocky and steeply sloping. The Taxpayers presented no evidence regarding the market value of the Beach Lot. The board is therefore unable to conclude the Town incorrectly assessed the Beach Lot.

In determining that the Town's revised assessment did not warrant further adjustment, the board based its decision on several factors. First and foremost, the board finds the Taxpayers did not meet their burden of proving the Property was disproportionally assessed and that a further reduction in the assessment from the Town's revised value was required. While the Taxpayers raised several questions concerning the Town's general assessment methodology and its consideration of the use of the Beach Lot, they did not provide any evidence to show what impact, if any, the issues raised had on the Property's market value.

Justice requires that an order for abatement not relieve the Taxpayers from bearing their share of the common burden of taxation, despite any error in the process of determining the amount of that share. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2004). For example, proving the municipality lacked a "sound methodology" when it made the assessment is not

sufficient, unless there is proof of disproportionality. Id. at 367-68. One of the Taxpayers stated at the hearing he had no idea what the market value of the Beach Lot was.

The board finds the Town's review of the Property subsequent to the filing of the abatement request, including the inspection performed in May 2004 as well as the review of the neighboring properties of Learned and Decesare,[1] appears to be a good-faith effort to determine the Property's assessment consistent with those in the neighborhood.

Therefore, based on the reasons previously discussed and the fact the Town appears to be consistently assessing comparable properties, coupled with the Taxpayers' lack of any market value evidence, the board finds the Taxpayers failed to meet their burden of proof that a further abatement is warranted.

If the taxes have been paid, the amount paid on the value in excess of $313,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. (From the Town's letter dated August 23, 2004, it appears taxes had been paid because the Town sent the Taxpayers "an abatement check based on the revised value of $313,500," but it is not clear whether that check included interest; it is also uncertain whether the Taxpayers have cashed, or intend to cash, that check. If the abatement check included the appropriate interest for the period from the date the taxes were paid to the date the abatement check was issued, no additional interest is required.) 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.

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[1] The Property is identified as Map 202, Lot 23 and the Learned and Decesare properties are Map 202, Lot 22 and Map 202, Lot 21, respectively. A review of the contract assessor's letter to the Town's board of selectmen (Taxpayer Exhibit 5) indicates the Taxpayers agreed their Property is of a better quality than the abutters. It should be noted that even if some of the surrounding properties had differing assessments and may have been underassessed, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399,401 (1987).

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

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Souren and Jolene Alexanian, 34 Bates Street, Mendon, Massachusetts 01756, Taxpayers; Craig A. Nichols and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, Town Representatives; and Town of Alexandria, Chairman, Board of Selectmen, 45 Washburn Road, Alexandria, New Hampshire 03222.

Date: September 29, 2004

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Anne M. Stelmach, Deputy Clerk