

Ralph Rossi and Patricia Rossi

v.

Town of Winchester

Docket No.: 20347-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$179,600 (land \$133,900; buildings \$45,700) on Map 35/Lot 19-1, a single-family home on a .8-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) Taxpayer Exhibit No. 1 contains a narrative of the reasons why an abatement is proper, as well as supporting evidence;

- (2) this evidence includes an appraisal prepared by Powers & Associates, Inc. (the “Powers Appraisal”) which estimated the value of the Property at \$128,000 as of the assessment date;
- (3) Hal Grant, a licensed real estate agent, estimated the fair market value at \$130,000 using six comparable properties, and his estimate is also included in Taxpayer Exhibit No. 1;
- (4) the Property is not on the main water body of Forest Lake but rather on its outlet and has no views of the lake; and
- (5) the Property is exposed to a lot of noise because of its location on the corner of Route 10 and Forest Lake Road, both which have significant traffic; and the Property is also exposed to traffic and noise caused by several area race tracks.

At the hearing the Town recommended a revised assessment of \$149,000 and argued it was proper because:

- (1) the recommended assessment is based on a reduced land value to reflect the fact the Property is on the outlet brook of Forest Lake and not on the lake itself and has no views of the main portion of the lake;
- (2) three lakefront properties have higher sales prices than the value asserted by the Taxpayers as shown in the comparable property sales and assessments submitted by the Town; and
- (3) the Powers’ Appraisal does not make sufficient adjustments to the comparables for the water frontage and lake access of the Property.

The parties agreed the level of assessment in the Town was 100% for tax year 2003.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$140,800 (land \$95,100; buildings \$45,700). This assessment is arrived at by reducing the site condition factor from 2.50 to 2.25 and the 137 feet of water frontage condition factor from 52% to 22%.

The board agrees with both parties' observations that this Property has a number of unique factors, both positive and minus, that affect its value and make it difficult to fit the assessment model parameters without some judgment and adjustments. The board in arriving at its adjustments considered and gave weight to both the Taxpayers' estimate of market value (primarily the Powers Appraisal) and the three waterfront and nine non-waterfront residential sales submitted by the Town. The board finds a positive attribute of the Property is it has seasonal access to Forest Lake and pleasant frontage on the outlet of the lake that is superior to the nine non-water influenced residential sales submitted by the Town. On the other hand, however, the board agrees, as the Town has recognized, that the waterfront is significantly inferior to that on the main lake itself. Thus, the board has adjusted the front foot condition factor from 52% to 22%. (At the hearing the Town stated it was unable to provide an assessment-record card showing the calculations of its recommended assessed value of \$149,000, but represented that the adjustment had occurred in the land portion of the assessment. The board notes that adjusting the front foot land condition factor to 22% arrives within a couple hundred dollars of the Town's recommended assessed value and is a reasonable adjustment to adequately reflect the difference in the quality of the Taxpayer's waterfront from other properties located on the main body of the lake.)

The Taxpayers provided traffic counts and descriptive evidence of the busy traffic both on Route 9 and Forest Lake Road which border two sides of the Property. The board agrees, given the small size of the lot and the dwelling's very close proximity to Forest Lake Road, the traffic impact is significant and unique enough for it to likely be a factor any prospective purchaser would consider both from a noise and a safety stand point. "When property is appraised, all factors relevant to its value should be considered..." Paras v. Portsmouth, 115

N.H. at 67-68 (1975). This traffic impact is more property specific than the background noise of the race tracks which conceivably has a more general market affect due to their more wide-ranging nature as described by the Taxpayers. The board has made no specific adjustment for the race track noise as it is likely inherent in the base land values the Town derived from the market and utilized during the 2003 reassessment. Thus, the board has reduced the site condition factor from 2.50 to 2.25 solely to recognize the impact of the traffic and its proximity to the Property.

In reviewing the market evidence and arguments submitted by both parties, the board has weighed the opposing and at times offsetting factors of the Property to arrive at a just assessment. For example, the board agrees with the Town that the Powers Appraisal “site” adjustments are underestimated for the difference between the right of way water access and Ashuelot River frontage of the comparables and the Taxpayers’ more direct waterfront access and, if increased slightly, would approximate the value found by the board. As with many appraisals, there is no one definitive answer but applying judgment to the various market indices, arrives at a proportionate assessment. “Given all the imponderables in the valuation process, [j]udgement is the touchstone.” Public Service Company v. Town of Ashland, 117 N.H. 635, 639 (1977).

If the taxes have been paid, the amount paid on the value in excess of \$140,800 shall be refunded with interest at six percent per annum from date paid to refund date for tax years 2003 and 2004 only given the fact the Town performed a town wide assessment update in 2005. RSA 76:17-a.

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: Ralph and Patricia Rossi, 528 Forest Lake Road, Winchester, NH 03470, Taxpayers; and Chairman, Board of Selectmen, Town of Winchester, 1 Richmond Road, Winchester, NH 03470.

Date: January 4, 2007

Anne M. Stelmach, Clerk