

Austine R. & George W. Howard, III

v.

Town of Holderness

Docket No.: 20489-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessments of Map 232, Lot 009 (“Lot 9”), for \$1,204,600 (land \$1,093,800; buildings \$110,800) on 1.7 waterfront acres with improvements; and Map 232, Lot 008 (“Lot 8”), for \$1,138,100 (land \$985,700; buildings \$152,400) on 1.393 waterfront acres with improvements (the “Properties”). The Taxpayers also own (but are not appealing) Map 247 Lot 064 assessed for \$67,000 (land only). The parties’ concurred Lot 064 was reasonably assessed and, therefore, was not an issue in this appeal. 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 assessments were 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 Properties assessments were higher than the general level of assessments in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) an analysis of all waterfront sales which occurred from 2001 through 2003 indicated the average waterfront assessed value was far less than the Properties' assessed values;
- (2) the Properties are below average compared to other properties in the cove, share the same road with six families, are seasonal, the grade is not level, and the views are not what many properties on the lake command;
- (3) as a result of the Properties' location near the entrance to the lake, boat traffic is greater than most lots on the lake;
- (3) the purchase of Lot 9 was not an arm's-length transaction as it was purchased from an abuttor at a price almost double its value;
- (4) the assessed values of the buildings are excessive as they are in poor condition; one cottage on Lot 9 was razed subsequent to tax year 2003;
- (5) comparable sales (specifically Map 236 Lot 073) and assessments support the Properties are overassessed; and
- (6) assessments on Squam Lake are disproportionate to the Town's overall equalization ratio of 97%.

The Town argued the assessments were proper because:

- (1) the Taxpayers' comparable sale on Kesumpe Point (Map 236 Lot 073) was not an arm's-length transaction as the owner's mate had passed away, the owner was quite distressed, and took an offer to purchase all within one week without exposing the Property to the open market;
- (2) the purchase of Lot 9 is considered an arm's-length transaction because the lot had been listed on the open market with a broker who had a valid offer to purchase; the heirs of the estate

then went to the Taxpayers with information regarding the offer at which time they purchased the lot without broker involvement;

(3) market values are lower in Kesumpe Point, Grapevine Cove, Cotton Cove and Glen Cove because of their congestion, boat traffic, docks, etc.; the demarcation to higher value properties changes dramatically in Mooney Point;

(4) resales in the Town indicate an overall market increase ranging from 19% to 22% per year from 2002 to 2003;

(5) a summary appraisal report prepared by Corcoran Consulting Associates, Inc. (Corcoran Appraisal) adjusting sales for time, size and amount of lake-frontage indicated market values as of April 1, 2003 of \$1,201,500 for Lot 8 and \$1,219,900 for Lot 9; and

(6) the assessments of the Properties are supported by the sales analysis.

Board's Rulings

On September 27, 2006, the board took a view of the Property, some of the general neighborhoods and coves testified to by the parties, and specifically comparables #1 and #2 (Lot 9 of the Taxpayers' Properties) submitted in the Corcoran Appraisal.

For the following reasons, the board finds the Town's assessments are reasonable and the Taxpayers' arguments did not carry their burden to prove disproportionality.

The Taxpayers calculation of average front foot values from the various Squam Lake sales is not a reliable method for estimating the market value of a specific property. As the Taxpayers conceded during the hearing, these sales included some with significant improvements, some in inferior cove locations and, in one case, a condominium. Moreover, even if the group of sales was more homogeneous, averaging unit prices such as waterfront values is not an accepted manner of estimating market value. Rather, the process of choosing the

most comparable sales available and making discreet adjustments to them for their unique differences is a more accurate way to arrive at a reasonable estimate of market value.

On the view, the board noted the pleasant secluded neighborhood the Properties are located in but did not find the private shared drive to be a detriment or abnormal for such waterfront property. The terrain and orientation to and the view of Squam Lake from the Properties is more similar to the Corcoran Appraisal comparable #1 than other sales contained in the Taxpayers' exhibits and is given the most weight by the board as being indicative of the market value of the Properties. Based on its view and review of the evidence, the board agrees with the Town's testimony and assessment methodology that properties and sales located in narrower cove areas, such as Grapevine Cove, Cotton Cove, and areas south of Mooney Point, are generally more congested with smaller lots, concentrated and closer boat traffic, and are generally in inferior locations relative to the Properties' southern exposure on Mooney Point.

While there was conflicting evidence submitted, as to whether the contingencies the prospective purchaser/builder had with the seller of Lot 9 would have affected its ultimate selling price, the board finds the Taxpayers' purchase price of \$999,000 was not an aberration based on its review of the other market data submitted by the parties and its view of the Properties and comparables. Lot 9 has a pleasant view, sandy waterfrontage in one area and rolling terrain that makes it a desirable Squam Lake property with a market value much greater than the \$584,650 value argued by the Taxpayers and more in line with its sale price and the sale price of Town's comparable #1.

There is evidence to support the Taxpayers' testimony of the poor condition of some of the improvements. One of the cottages on Lot 9 was subsequently torn down, the other was repaired and one of the cottages on Lot 8 had evidence of deferred maintenance observed on the

view. However, their presence does provide an interim use value and potentially a grandfathered right if any land use setback requirements are impacted. Moreover, it is the total assessed value that must be considered in determining proportionality. See Appeal of Town of Sunapee, 126 N.H 214, 217-218 (1985).

For all of the above reasons, the appeal for abatements is denied.

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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James Lafrance, Esq., Normandin, Cheney & O'Neil, PLLC, PO Box 575, Laconia, NH 03247-0575, counsel for the Taxpayers; and Town of Holderness, Chairman, Board of Selectmen, PO Box 203, Holderness, NH 03245.

Date: October 4, 2006

Anne M. Stelmach, Clerk