

Karlya J. Wheeler

v.

Town of Canaan

Docket No.: 20544-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment on Map 000I-F, Lot 62 a single-family home on a 0.34 acre lot of \$112,500 (land \$70,400; buildings \$42,100) (the “Property”). The Taxpayer also owns but did not appeal Map 000I-F, Lot 76 a 0.04 acre lot initially assessed at \$12,000 (land only) but abated by the Town to \$6,000. 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 assessments were 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 did not contest the abated assessment on lot 76 but argued the assessment on Lot 62 was excessive because:

- (1) it is not a water access lot and the “condition” factor should be reduced from 300 to 200;
- (2) Lot 76 was purchased in 1997 to gain access to the water;
- (3) Lot 62 is assessed as a water access lot while Lot 13C (Ashe), a nearby, water access property, is not assessed as such; and
- (4) the State charges \$2.50 per foot (or \$500 in the Taxpayer’s case) each year for the license to access Goose Pond through New Hampshire Water Resources Council (“NHWRC”) land.

The Town argued the assessment was proper because:

- (1) Lot 62 should be considered a water access lot due to its common ownership with Lot 76;
- (2) the neighborhood is in transition from seasonal to year-round properties; and
- (3) the assessment, when equalized, is not excessive and the Taxpayer has presented no evidence of the Property’s market value to support her argument that the Property is overassessed.

During the hearings of the two cases heard on December 7, 2005 (Helen D. Skeist v. Town of Canaan, Docket No.: 20512-03PT and Karlya J. Wheeler v. Town of Canaan, Docket No.: 20544-03PT), the parties agreed that due to the similarity of the issues in the two cases, and in lieu of repeating duplicative testimony, the board could take official notice (RSA 541-A:33 V) of the evidence and testimony given in the two proceedings. Therefore, the board’s ruling in each case considers the testimony and evidence given in both cases.

Board’s Rulings

Based on the evidence, the board finds the assessment for Lot 62 should be reduced to \$105,600 (land \$34,700, buildings \$70,900).

In making its determination of the proper assessment, the board deliberated at great length given the complicated nature of the two interrelated lots. Appeal of Sunapee, 120 N.H.

214, 217 (1985) (A Taxpayer's entire estate must be considered in determining if an abatement on the appealed property is warranted). While Lot 62 is not so unique in either its configuration or its location, Lot 76 is very unique in its configuration being comprised of two, small, disconnected triangles of land on the west side of Goose Pond Road. There are several instances in the neighborhood where taxpayers own a piece of land with improvements on the east side of Goose Pond Road and another smaller piece of land on the west side of Goose Pond Road directly across from the first piece. It should be noted, however, that the small tracts owned between Goose Pond Road and Goose Pond do not provide direct, legal access to Goose Pond. Goose Pond is an impounded body of water and the State of New Hampshire owns the land around the pond to an elevation of 107.5 feet. To have legal access to Goose Pond the Taxpayer must pay an annual fee to obtain a license from the NHWRC to cross its land.

Given the vacuum of market evidence provided, the board, based on its experience, finds the market would recognize the difference between the interrelation of the Taxpayer's two lots and those taxpayers with two lots configured as discussed above. The board makes the determination for two reasons: 1) Lot 62 is not directly across from Lot 76, and 2) other taxpayers have easements to cross Lot 76, to get to the NHWRC land and access the water. The board will address each issue in turn.

First, Lot 75, the "George" property, is directly across Goose Pond Road from Lot 62 (see photographs in Taxpayer Exhibit #2). The Taxpayer estimated, and the Town did not refute, Lot 76 to be at least one hundred feet down Goose Pond Road from Lot 62. This separation of the two lots is unusual in this neighborhood and reduces the desirability and contributory value of Lot 76 to Lot 62. Despite the fact Lots 62 and 76 are not directly opposite each other and despite the fact the evidence indicates they were acquired and could be sold separately by the

Taxpayer, the board concludes their highest and best use is as one economic unit because of the water access Lot 76 provides and the relative proximity of the two lots. 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 285-87 (1982) (“Property is to be valued at its ‘best and highest use’.”)

Second, several lots identified on the Town’s tax maps as lots 13 and 13A through 13E located on the east side of Goose Pond Road have deeded easements across the Taxpayer’s Lot 76 enabling them to access the NHWRC land and, with a license, Goose Pond. Two of these lot owners have contributed to the cost of the license obtained by the Taxpayer to access Goose Pond. This atypical arrangement is not found elsewhere in the neighborhood.

The board finds these unique circumstances are something the market would recognize and that a reduction in the land portion of the assessment on Lot 62 is warranted. The board finds the appropriate adjustment is to reduce the condition factor on the land value of Lot 62 from 300 to 250. The board finds the Taxpayer’s request to lower the condition factor from 300 to 200 to be too great and would understate the contributory value of Lot 76 to the value of Lot 62.

The board recognizes this as a subjective determination; however, it is based on the board’s experience and judgment.¹ However, we find the total of Lot 62 and Lot 76 abated assessments of \$111,600 (Lot 62, \$105,600 and Lot 76, \$6,000) results in a proportional assessment of the Taxpayer’s entire estate because of the unique factors discussed above. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975) (This board, as a quasi-judicial body, must weigh

¹ The agency’s experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); See also Petition of Grimm, 138 N.H. 42, 53 (1993) (Administrative board may use expertise and experience to evaluate evidence).

the evidence, consider all factors that affect market value and apply its judgment in deciding upon a proper assessment.)

If the taxes have been paid, the amount paid on the value of Lot 62 in excess of \$105,600 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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Karlya J. Wheeler, 840 Goose Pond Road, Canaan, NH 03741, Taxpayer; and Chairman, Board of Selectmen, Town of Canaan, PO Box 38, Canaan, NH 03741.

Date: 1/27/06

Melanie J. Ekstrom, Deputy Clerk