

Peerface Cove, Inc.

v.

Town of Sandwich

Docket No.: 20657-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment, before abatement, of \$282,200 (land only) on Map R21/Lot 038 and \$1,063,500 (land \$1,008,000; building \$55,500) on Map R21/Lot 039. The “Property” consists of two adjacent lots on Jimmy Point Road: Lot 38, 0.30 acres; and Lot 39, 0.76 acres. The record (Taxpayer Exhibit No. 4) indicated the two lots had subsequently been abated for the 2004 tax year by the Town to a total value of \$1,225,500 but no breakdown between the lots had been submitted as part of the record. 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 assessment was 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 argued the assessment was excessive because:

(1) the Town valued the land ‘as if’ a 3,500 square foot structure could be built on it, but in fact the location and various applicable setback/zoning restrictions limited the use of the land to the existing, nonconforming one room (former icehouse) of approximately 330 square feet as of the assessment date, April 1, 2004;

(2) the Taxpayer did receive Town approval (a special exception) to add approximately 165 feet to the structure, but this approval was not obtained until October 2004 and the structure was not completed until the spring of 2006;

(3) comparisons to other properties in the same general area of Squam Lake which can and have been developed with large structures indicate the Property is overassessed;

(4) an appraisal completed by Mr. Robert Lamprey, a licensed appraiser (“Lamprey Appraisal”), estimates the value of the Property as \$385,000 as of February 11, 2002 and applied a 20% rate of appreciation to estimate a value of \$423,500 as of August 11, 2002; and

(5) an abatement should be granted based on the Lamprey Appraisal value estimate, adjusted by the rate of appreciation until the assessment date.

The Town did not attend the hearing but argued in the submitted documents that the assessment was proper because, as stated in the Town’s “Abatement Response” (contained in Taxpayer Exhibit No. 1):

(1) the “usability” of the land compared to other properties which were assessed in the same neighborhood;

(2) “land value, although affected by size, is far more affected by its ability to be used”;

(3) the two adjacent lots were merged after the assessment date, but no changes were made for that reason for the 2004 tax year; and

(4) the Town was correct in denying the Taxpayer's request for abatement.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$761,100 (land \$705,600; building \$55,500) for Lots 38 and 39. This abated assessment is based on: 1) a determination the highest and best use of the two lots was combined as one estate despite their official merger subsequent to April 1, 2004; and 2) a calculation utilizing the combined area of 1.06 acres with a base lot value (on the assessment-record card) of \$1,120,000 and adjusted by the neighborhood factor of .90 and a condition factor of .70 to reflect the unique limited utility of the Property, due to its small size and inability to support a more conventional size and style of residence. The board's specific findings follow.

First, the board determines the highest and best use of Lots 38 and 39 are as one estate because even without the voluntary merger (see RSA 674:39-a), RSA 75:9 provides for the assessment of lots which "are situated so as to become separate estates" to be assessed separately. Here the inverse is true. While Lots 38 and 39 technically are separate lots of record, their assemblage produces a parcel that has higher utility and value than if considered as separate economic units. The Lamprey Appraisal, both in its site description and highest and best use section, arrives at the same conclusion that Lot 38, as a stand alone parcel, would have very limited possible uses and thus it is more economically feasible to assemble it with Lot 39.

Second, as testified to by one of the Taxpayer's principals, Mr. Lansing Fair, and the observations contained in the Lamprey Appraisal, the Property is difficult to value. Comparable sales are difficult to find due to the Property's small size, Jimmy Point Road bisecting the Lot 39 and the inability of the Property, due to the set back limitations imposed by the Sandwich Zoning

Ordinance, to support a larger dwelling that is the norm for the sales that were submitted by the parties.

The Taxpayer argued, and the board agrees, the evidence is clear that, due to the setback requirements of the zoning ordinance (see Taxpayer Exhibit No. 2 and excerpts from Zoning contained in the Lamprey Appraisal at pp. 33-37), the existing nonconforming cottage had the potential of being expanded by no more than 50% of its square footage, thus limiting the maximum potential area to under 500 square feet. This size is substantially smaller than most camps or year-round residences on Squam Lake.

The Taxpayer submitted the full Lamprey Appraisal at hearing (as opposed to only the summary conclusion of the appraisal appended to the appeal). After reviewing its extensive analysis, the board gives the Lamprey Appraisal some weight, but disagrees with its value conclusion. The Lamprey Appraisal recognizes the limitations of the improvements that can be placed on the Property and consequently sought out comparable sales of similar small lots in order to value the Property. The Lamprey Appraisal contained extensive discussion of the myriad factors which could affect value and, after these adjustments, estimated a value of \$423,500 as of August 2002. Trending the value conclusion at the 20% per annum rate discussed in the Lamprey Appraisal to the April 1, 2004 assessment date results in an indicated market value of \$557,622. While the board finds the Lamprey Appraisal to be credible and extensive, the magnitude of the time adjustment for the Squam Lake market raises a question as to whether such adjustment adequately accounts for the change in market conditions from the sale dates of the comparables to the April 1, 2004 assessment date.

Further, and more importantly, all the Lamprey Appraisal comparable sales, based on a review of the detailed listings at the rear of the appraisal, appear to be small lots in more

congested neighborhoods. The Taxpayer's Property, while small, is in a neighborhood of larger acreage lots, with some involving conservation easements. The board finds this is a positive factor (particularly in the Squam Lake market which prizes open space and privacy) not adequately recognized in the Lamprey Appraisal. The board notes the Lamprey Appraisal did adjust for the relative privacy of the Property and the comparables, but also judged the Property as being less private due to the bisection of Lot 39 by Jimmy Point Road. Based on the maps submitted and the general description of the neighborhood, the board concludes that any vehicular or pedestrian traffic on Jimmy Point Road is likely to have a negligible privacy impact and overall the Property is significantly benefited by the adjoining larger properties of conservation land to a degree not recognized in the Lamprey Appraisal.

During its deliberations, the board researched the files in Docket No. 18357-00RA, the docket in which the board ordered a 2004 reassessment be performed in the Town of Sandwich under its RSA 71-b:16 authority. Those files contain the 2004 assessment manual prepared by Avitar Associates of New England, Inc. ("Avitar") for the Town of Sandwich containing a description of its assessment models and market analyses and the sales utilized during the 2004 reassessment. Such assessment manuals are referenced in the board's rules as municipal market data surveys (see Tax 102.33) and are public records available for taxpayers, in general, to review (see Tax 201.33(i)). Further, Tax 203.10(d) provides for the board to request from a municipality "the assessment manual or municipal market data survey to assist the board in understanding the methodology used by the municipality and to enable the board to use the manual if the board concludes an assessment needs to be adjusted using the manual."

The board's review of the 2004 assessment manual notes two sales of Squam Lake waterfront properties occurred during the time frame of the analysis. One sale, also noted by the

Taxpayer, of Map 21/Lot 35 (a 3.9 acre parcel at 138 Jimmy Point Road with a cottage), sold for \$1,400,000 on April 3, 2004. The board agrees with the Taxpayer that the 138 Jimmy Point Road sale (Lot 35) is a significantly larger parcel superior to the Property and thus is not comparable. The second sale is of Map 20/Lot 40 and Lot 40-A with Lot 40-A being the 0.40 acre Squam Lake access parcel for the Lot 40 (17 acres) at 725 Squam Lake Road. The total June 2003 sale price was \$450,000, which Avitar allocated in its analysis between the two parcels (\$420,000 for Lot 40-A and \$30,000 for Lot 40). While such allocation is inherently subjective and involves judgment, it does not seem unreasonable to the board based on the base rates established by Avitar during the reassessment and does provide a general indication of what an unbuildable small water access parcel is worth.

The general valuation indicators of the Lamprey Appraisal, modified for time and better neighborhood, and the two bookends of value of the sales contained in the 2004 assessment manual provide some guidance to the adjustment needed for a proportionate assessment. As a consequence, the board has utilized its judgment and experience¹ and applied a 30% condition factor to the site to recognize the Property's limited utility relative to the superior utility of the comparable sale properties with larger land area. The board has estimated the base rate, for the combined 1.06 acre area, to be \$1,120,000, based on a review of Avitar's assessment manuals "land pricing zone" for "shoreland" (see below) and the several assessment-record cards in evidence.

¹ The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 71-B:1; RSA 541-A:33 VI; Appeal 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).

ZONE 01			
		1,000 @	0.010 ac
		23,500 @	0.250 ac
Description:	RURAL/RESIDENTIAL	29,000 @	0.500 ac
Lot Size:	2.25	31,875 @	1.000 ac
Frontage:	160.00	34,000 @	2.250 ac
		34,000 @	2.250 ac
Lot Price:	34,000.00	34,000 @	2.250 ac
Excess Acreage:	2,500.00	34,000 @	2.250 ac
Excess Frontage:	50.00	34,000 @	2.250 ac

ZONE 02			
		1,000 @	0.010 ac
		23,500 @	0.250 ac
Description:	HD-HISTORIC	29,000 @	0.500 ac
Lot Size:	2.25	31,875 @	1.000 ac
Frontage:	160.00	34,000 @	2.250 ac
		34,000 @	2.250 ac
Lot Price:	34,000.00	34,000 @	2.250 ac
Excess Acreage:	2,500.00	34,000 @	2.250 ac
Excess Frontage:	50.00	34,000 @	2.250 ac

ZONE 03			
		1,000 @	0.010 ac
		25,000 @	0.250 ac
Description:	COM-COMMERCIAL	33,000 @	0.500 ac
Lot Size:	2.25	45,250 @	1.000 ac
Frontage:	160.00	50,000 @	2.250 ac
		50,000 @	2.250 ac
Lot Price:	50,000.00	50,000 @	2.250 ac
Excess Acreage:	3,000.00	50,000 @	2.250 ac
Excess Frontage:	55.00	50,000 @	2.250 ac

ZONE 04			
		250,000 @	0.010 ac
		500,000 @	0.250 ac
Description:	SHR-SHORELAND	950,000 @	0.500 ac
Lot Size:	2.25	1,120,000 @	1.000 ac
Frontage:	160.00	1,125,000 @	2.250 ac
		1,125,000 @	2.250 ac
Lot Price:	1,125,000.00	1,125,000 @	2.250 ac
Excess Acreage:	2,500.00	1,125,000 @	2.250 ac
Excess Frontage:	1,500.00	1,125,000 @	2.250 ac

In conclusion, the board acknowledges its value conclusion is lower than the limited waterfront sales in the assessment manual and those Avitar provided to the Taxpayer as part of Taxpayer Exhibit No. 4. However, the sale properties on which the Town relies are all significantly larger and have greater rights and utility than the one under appeal. As a consequence, the board finds it is reasonable to acknowledge that limitation in use, as the market would likely recognize, and adjust the assessment as described above.

If the taxes have been paid, the amount paid on the value in excess of \$761,100 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Peerface Cove, LLC, c/o Julia and Lansing Fair, 5 Berkeley Place, Cambridge, MA 02138; and Chairman, Board of Selectmen, Town of Sandwich, PO Box 194, Center Sandwich, NH 03227.

Date: September 4, 2007

Anne M. Stelmach, Clerk