

Tyler and Lucia Carlisle

v.

Town of Deering

Docket No.: 20962-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$273,500 (land \$222,900; building \$50,600) on Map 228/Lot 35, a seasonal camp property on 0.37 acres (the “Property”). 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 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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) a comparison of six similar properties listed on the market in the fall of 2004 supports a lower value;
- (2) because of setback requirements, the Property could never be a year-round residence;

- (3) the building is built on piers, the walls and roof are insulated, but the floors are not, and the Property's access is via a right-of-way;
- (4) the Town's comparables are all larger in size and have more water frontage; and
- (5) the market value as of April 2004 was \$260,000.

The Town argued the assessment was proper because:

- (1) the Property has been assessed as a seasonal camp with well and septic system;
- (2) the base rate for the land is used consistently for seasonal properties many of which are accessed via a right-of-way;
- (3) the neighborhood code of C is applied for the quality of the road being "camp quality" with a land condition factor of 600 for water frontage;
- (4) the assessed value is supported by comparable sales; and
- (5) the Taxpayers' estimate of market value is within 5% of the equalized assessed value which is in the realm of probability and no abatement is warranted.

The parties stipulated that the level of assessment in the Town was 100.9% for tax year 2004.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Property's indicated market value is \$271,060 when the assessment of \$273,500 is equalized by the Town's level of assessment of 100.9%.

The Taxpayers are seeking a further abatement¹ based on a market value estimate of \$260,000. This equates to a difference in value of less than 5%. The Taxpayers argued even if the difference in value is relatively minor, they should be granted an abatement. The board

¹ The Property was originally assessed at \$332,000 but was abated at the Town level to \$273,500 prior to the filing of the appeal. See Taxpayer Exhibit No. 7.

finds, however, that the Taxpayers did not submit sufficient evidence to support a market value finding of \$260,000. “In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993).

The Taxpayers merely submitted a list of six properties which were on the market in the fall of 2004 (Taxpayer Exhibit No. 8) and supplied the listing sheets for those six properties, five of which are in other towns. There was no evidence provided to show if and when the properties sold or their selling prices. To prevail on their claim, the Taxpayers needed to prove by a preponderance of the evidence that they are paying more than their proportional share of taxes on the Property. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). The Taxpayers’ evidence of properties listed for sale, without supporting data regarding their comparability, or consideration of adjustments for differences in location, lot and building sizes, topography, water frontage, etc., does not support their claim of disproportionality.

The Town did submit evidence of comparable sales that supported its assessment and the adjustments made to the Property which included its deeded access. The Town further asserted the Property was not assessed as a year-round residence, but rather was assessed consistent with all seasonal properties in the Town with a neighborhood code of C, which is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 188-90 (1982). Further, to the extent the Taxpayers asserted the Property could not be converted to a year-round residence due to setback requirements, that evidence is immaterial as the Town has assessed the Property as seasonal.

Based on the above, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Tyler and Lucia Carlisle, 35 Oak St., Manchester, NH 03104, Taxpayers; Gary J. Roberge, Loren J. Martin and Edward Tinker, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representative; and Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Rd., Deering, NH 03244.

Date: June 4, 2007

Anne M. Stelmach, Clerk