

George and Nancy LePage

v.

Town of Rumney

Docket No.: 21228-04PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$155,960 (land \$23,110; buildings \$132,850) on Map 13/Lot 02-27, a single-family home on a 38.5-acre lot of which 37.5 acres are in current use (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) the Property is disproportionately assessed when compared to similar log cabins in the Town;

- (2) the loft, upstairs bathroom and floor were not finished as of April 2004 and the Property does not have a chimney as many of the comparables do;
- (3) the lot has steep topography thus, half of the foundation is exposed which allowed for a walkout basement and the basement is unfinished;
- (4) the Property is located on an unpaved road;
- (5) the Property's market value is between \$125,000 and \$130,000; and
- (6) the Town's comparables are not similar to the Property and several are not located in Rumney.

The Town argued the assessment was proper because:

- (1) the Property is larger than the Taxpayers' comparables and the unfinished portion of the one-half story of the home would not represent a significant value difference;
- (2) none of the Taxpayers' comparables have walkout basements which are worth more than an ordinary basement; and
- (3) comparable sales in Rumney and Wentworth support the assessed value.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$141,810. The assessment is comprised of three components: 1) the value of the building (\$119,700); 2) the value of the land not in current use (\$18,300); and 3) the value of the land in current use (\$3,810). The board will address each of these components separately.

Regarding the assessed value of the building, the board finds a negative 10% adjustment for functional obsolescence is warranted. The Taxpayers testified it was necessary, due to the issues with the topography, to build the dwelling into the side of the hill, causing the walkout basement's access point to be in the front. A review of the testimony and evidence submitted at

the hearing, including the photographs in Municipality Exhibit No. C, show that due to the steep terrain and the placement of the building on the Property, it is necessary to have an extended flight of stairs to get from the driveway/parking area to the main living level. The board finds this feature would most likely have a negative effect on the Property's market value and should be reflected in the assessment. Whether the owners climb the long, exterior flight of stairs or go into the basement and then climb an interior flight of stairs in order to access the main living level of the dwelling, the board finds this feature is, at the very least, inconvenient and in some instances, if the Property were for sale, may preclude some potential purchasers from considering the Property. The Town argued the dwelling's walkout basement increased the Property's market value. While walkout basements usually provide another access point to a dwelling at a level different from the main living level, typically this occurs at the back or end of a dwelling and is not one of the dwelling's primary entrances rather than in the front, as is the case with the Property. Applying the 10% functional obsolescence factor to the dwelling's replacement cost of \$93,900 results in a depreciated value for the dwelling of \$84,510. Combining the dwelling's revised value with the \$1,000 value of the shed and then applying the local multiplier (1.4), yields a new assessed value for the buildings of \$119,700 (rounded) through the following calculation: $\{[(\$93,900 \times 0.9) + \$1,000] \times 1.4 = \$119,700\}$.

For the land not in current use, the board finds a negative 5% adjustment for the topography of the Property is warranted. The photographs in Municipality Exhibit No. C show the Property's significant change in elevation from the street to the rear of the site as well as its rocky terrain. The board finds this change in topography and the rocky terrain limits the utility of the Property's site. Comparing the photographs of the Property with those in Municipality Exhibit No. C show the Property's topographical issues are not shared by the comparables. The

5% adjustment to the land valuation yields a revised assessed value for the land not in current use through the following calculation: $\$19,300 \times 0.95 = \$18,300$.

There was no dispute concerning the value of the land in current use and the board has adopted the Town's \$3,810 valuation.

Combining the revised value of the land not in current use with the value of the land in current use yields a total land value of \$22,110. Adding this figure to the revised building value of \$119,700 yields the new \$141,810 assessment.

During its deliberations, the board reviewed all the comparable sales information and photographs submitted by the parties. The previously discussed adjustments were partially based on this review. The board notes, however, the comparable sale listed as Map 13-03-27, the Domigan property, was not considered a good comparable to the Property as it had a second entrance and kitchen and was essentially a two-family dwelling.

If the taxes have been paid, the amount paid on the value in excess of \$141,810 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

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: George and Nancy LePage, 164 Hughes Avenue, Pawtucket, RI 02861, Taxpayers; and Chairman, Board of Selectmen, Town of Rumney, PO Box 220, Rumney, NH 03266.

Date: July 2, 2007

Anne M. Stelmach, Clerk