Kenneth and Sara Peterson

v.

Town of Northwood

Docket No.: 21736-05PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2005 assessments of: Map 113/Lot 3 ("Lot 3") - $69,000 (land only) a 0.34-acre lot; and Map 113/Lot 27 ("Lot 27") - $169,400 (land $169,300; building $100) a 0.29-acre lot with a shed (the "Properties"). For the reasons stated below, the appeals for abatement are 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 assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessments were excessive because:

(1) a 2001 sale of lot 30 for $215,000 (of which $115,000 was the land value) supports the overassessment of Lot 27;

(2) a land assessment of $23,700 for lot 23, a 0.08 acre lot on the water, also supports the Town's improper methodology as lot 23 would be purchased by abutters at substantially more than its assessed value;

(3) the $29,900 assessment of lot 8 is further support that the Town's assessment of the Properties is disproportionate;

(4) Lot 27 actually consists of two parcels and Lot 3 consists of three parcels all of which were created in 1948;

(5) the Town granted a variance on lot 1, within the setback requirements, which reduced the market value of Lot 3; further, the Town has also allowed a 3,000 square foot home to be built on lot 4 -- the old house was to be turned into a garage but the Town has allowed it to remain a house;

(6) the road is seasonal thus restricting access to the Properties most of the year and the lots have no wells or septic systems;

(7) the Town's methodology is flawed and unfair; and

(8) the April 2005 market value of Lot 3 was $12,689 and Lot 27 was $114,230.

The Town argued the assessments were proper because:

(1) Lot 3 is a water access lot with building potential and in a prior case before the board, the location of the garage on lot 1 was found not to be a factor affecting the market value of Lot 3;

(2) lot 8 has a septic system for lot 21 thus the assessment reflects that fact;

(3) lot 30 sold in 2001, the market has appreciated between 1% and 2% per month between 2001 and 2005 and to argue the real estate market was the same in 2005 is unrealistic;

(4) lot 23 is a very small (0.08 acres) lot and provides water access for three lots across the street; thus, a comparison cannot be made to the unencumbered Properties;

(5) three comparable sales support a range of value for Lot 27 of $174,250 to $175,800 and two comparable sales support a range of value for Lot 3 of $74,200 to $78,300; and

(6) the evidence supports the fair and equitable assessments on the Properties.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Properties were disproportionately assessed. The Taxpayers raised several issues which the board will address below.

First, the Taxpayers contend they own five lots rather than the two lots assessed by the Town. There is no dispute the development created in 1948 was set up with a significant number of very small lots. Subsequent to that date, many of the lots were merged to create larger lots (as depicted on the Town's tax map in Taxpayer Exhibit No. 1). With respect to Lot 27 which the Taxpayers' testified was two lots (13 and 14) and Lot 3 which the Taxpayers' testified were three lots (45, 45A and 46A), the board finds the Town has properly assessed them as two distinct lots.

> RSA 75:9 **Separate Tracts**. Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674-39-a.

The board need not rule on whether the "five" lots are so situated as to become separate estates in the context of RSA 75:9. The board finds the likelihood that variances could be obtained from the Town to build on the five original lots is slight at best and finds for the purposes of this

decision, Lots 3 and 27 as they have been depicted on the Town tax map and assessed by the Town are the appropriate method to consider them.

The Taxpayers compared Lot 27's market value to that of the "computed" land value of $115,000 from the 2001 sale of lot 30 for $215,000. (The assessment-record card for lot 30 indicates the sale took place in 2003, not 2001 as indicated by the Taxpayers.) The Taxpayers testified there was no increase in the market for waterfront properties thus lot 30's land value should be considered for the 2005 assessment supporting the overassessment of Lot 27. The Town testified market values for this type of property were appreciating at 1% to 2% per month during this timeframe. The 2005 assessment on lot 30 of $295,100 (land - $195,400; building - $99,700) reflects the increase in value from the sale date. Lot 30 consists of a total of 0.17 acre with 83 feet of water frontage. Lot 27 has 0.29 acres of land with 100 feet of water frontage. The board notes the Town has consistently assessed land values based on a base rate and the waterfront based on a $1,500 per foot rate. Lot 27 was assessed consistently with this practice. Lot 27 has been adjusted by the Town for the fact that it is a vacant lot and also for its topography. Further, the board does not find the sale of lot 30 is supportive evidence for an adjustment to Lot 27.

The Taxpayers argued the Town incorrectly assessed lot 23, a 0.08 acre waterfront lot, for $29,700 although it has abutter value greater than its assessed value. The Town testified the lot provides access to three non waterfront properties, lots 4, 5 and 6 and its value is captured in the value of those three lots. The board finds this method to be appropriate. Lot 23 is encumbered with the easements of the water access lots, could not be sold without these rights and certainly, based on its size, would not be buildable. Further, given that three other lots have deeded one-third rights to this lot, the lot could not be sold to an abutter without all three lot

owners agreeing to do so. Given that these three owners have purchased their one-third interest to obtain water access, its is doubtful this lot would ever become available for sale to an abutter.

The Taxpayers argued lot 8, a 0.73 acre lot, also supported the overassessment of the Properties. The Town testified, and the assessment-record card, supports this testimony, lot 8 and lot 21 are under the same ownership and the septic system for lot 21 is on lot 8. The board was not provided with an assessment-record card for lot 21 thus could not make any further determination of the assessment of the two lots with their unity of use without this document.

Further, the Taxpayers argued Lot 3 suffered because a building had been constructed within the setback limits on lot 1 and the Town had granted the owner of lot 4 a variance to convert his dwelling to a garage (when in fact he just built another dwelling on his lot). First, the board finds the Town's granting of variances in this neighborhood on small, grandfathered lots is some indication the Taxpayers' lot would also receive a variance to construct a dwelling. Second, the variance to lot 4 was granted on January 30, 2006, well after the date of assessessment in this case, April 1, 2005. In any event, the Taxpayers have not provided any market related evidence to show how either the addition to lot 1 or the construction on lot 4 has any market impact on Lot 3.

The Taxpayers argued the access road to the Properties is seasonal and the lots have no water or sewer. It is the board's experience[1] that it is not uncommon for lakefront roads to be seasonal and the value of the properties along those seasonal roads is reflected in the market. The board finds the Taxpayers have provided no evidence of any attempts to obtain a variance to

[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).

build on either Lot 3 or Lot 27. Further, given the Taxpayers own two lots, there is the possibility of obtaining a variance to construct a dwelling on one lot with the septic on the other (as is the case with lots 8 and 21). The Taxpayers have provided no evidence of any attempts to improve these lots and the assessments reflect their unimproved nature.

To succeed on a tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. This burden can be carried by establishing that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). The Taxpayers provided no credible evidence of market value to support an abatement. In fact, the evidence provided does indicate the Town used consistent methodology in assessing the waterfront and water access properties. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Taxpayers asked that their assessments be fair, equitable and consistent with other assessments and the board finds the evidence supports the Properties are fairly, equitably and consistently assessed; therefore, the requests for abatement are 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(g). 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

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Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Kenneth and Sara Peterson, 1477 Main Street, Lynnfield, MA 01940, Taxpayers; Chairman, Board of Selectmen, Town of Northwood, 818 First NH Turnpike, Northwood, NH 03261; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767 Sanbornville, NH 03872, contracted assessing firm for the Town.

Date: 8/4/08

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Anne M. Stelmach, Clerk

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Order

The "Taxpayers" filed an August 28, 2008 request for rehearing (the "Request") of the board's August 4, 2008 "Decision." The board entered a September 11, 2008 suspension order with respect to the Decision, to allow for additional time to review and rule on the merits of the Request. The suspension order is hereby removed. The board denies the Request to the extent it seeks to change the outcome of the Decision.

Rehearing motions are not granted "to consider evidence previously available to the moving party but not presented at the original hearing." Tax 201.37(g). The Request raises substantially the same arguments presented at the hearing and ruled on in the Decision. The Taxpayers did not demonstrate the board erred in the Decision and, thus, the Request failed to show any "good reason" to grant a rehearing. See RSA 541:3.

In the Request, the Taxpayers state they did not claim to own five lots established in 1948. The evidence speaks for itself on the date the lots were created; however, that date is irrelevant to the outcome of the Decision because as of the date of the appeal,