

Gregory and Roberta Reynolds

v.

Town of Washington

Docket No.: 21742-05PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$16,500 (land only) on Map 24/Lot 21, a 0.27 acre lot (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) the Property is vacant land with only a “tent platform”;
 - (2) the three comparable sales in Taxpayer Exhibit No. 3 have better locations and amenities;
- and

(3) the assessment should be abated to \$5,000.

The Town argued the assessment was proper because:

(1) the Town performed a full revaluation in 2005 and discovered this neighborhood had been significantly underassessed in prior years;

(2) the Property has deeded water access to Highland Lake, as noted on the assessment-record card (see also Taxpayer Exhibit No. 4, Section 10.A.);

(3) the Town accounted for the topography and other issues mentioned by the Taxpayers when it applied a “25” condition factor to the base lot value of the Property; and

(4) the Taxpayers’ first two comparables are from a different body of water with different amenities and the third comparable does not have any water access.

Board’s Rulings

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

Assessments must be based on market value. See RSA 75:1. “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 did not present enough credible evidence of the Property’s market value. They did not, for example, present an appraisal or other expert opinion. To carry their burden, the Taxpayers should have made a showing of the Property’s market value. This value would then have been compared to the Property’s assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of

Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985).

The board noted the testimony of one of the Taxpayers (Gregory Reynolds) that the Property has been in his family since the 1950's and that he bought it from his parents in the 1980's. He also testified he made efforts on his own to sell the Property through "personal contacts" in 2004 and could not get \$4,600 for it and that in 2003 someone at a realtor's office (Duggan Realty) had told him the Property was only worth about \$2,000. While the board considered this testimony, it does not sway the board's conclusion regarding a lack of probative evidence because making informal inquiries of a broker (who did not testify) and making an attempt to sell the Property privately is not a sufficient indication of its probable market value.

The Taxpayers submitted three comparable properties' listing sheets in Taxpayer Exhibit No. 3. These listing sheets showed what properties with better topographical features were selling for on other bodies of water. Testimony from the Town indicated the Taxpayers' first two comparables were on a different body of water and required some adjustments for their locations and the third comparable did not have any water access. The Taxpayers did not provide any information regarding any appropriate adjustments to be made or, in the alternative, any discussion as to why no adjustments were required.

The Taxpayers indicated on their appeal document that the Property had no water access. During the hearing, the board was provided a copy of the Property's deed (Taxpayer Exhibit No. 4). The board noted in paragraph #10 A of the deed the right of the Property to a membership in the Highland Lake Association. The board finds the deed is sufficient probative evidence to find the Property does have water access. Further, the Town submitted the assessment-record card and a map for Map 25, Lot 56 which is the common lot providing water access to all the

properties in the Highland Lake Association of which the Property may be a member. The Town testified the influence on the Property's market value for the water access was appropriately recognized on the assessment-record card under the second land valuation line.

The Taxpayers also argued the topography of the Property was so steep and rocky it precluded construction of a more substantial structure than many of the other properties on the lake. The board finds the Town's "25" condition factor applied to the base lot value reflects the Town's acknowledgement of the difficult terrain on the Property and the other features.

The Town submitted the assessment-record cards of three properties on Map 24, Lots 22, 23 and 25 which are properties similar to the subject Property and show they were consistently assessed using the same methodology as the Property.

The board finds, for all these reasons, the Taxpayers failed to prove the Property was disproportionately assessed or the Town's assessment is inaccurate.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Gregory and Roberta Reynolds, 827 Chestnut Street, Manchester, NH 03104, Taxpayers; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm; and Chairman, Board of Selectmen, Town of Washington, 7 Halfmoon Pond Road, Washington, NH 03280.

Date: June 13, 2008

Anne M. Stelmach, Clerk