

Josephine D. Crickett

v.

Town of New Durham

Docket No.: 22011-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 assessments of Map 35/Lot 2 - \$445,700 (land \$331,100; building \$114,600), a single-family home on a 32,000 square foot lot on Merrymeeting Lake (“Lot 2”); and Map 35/Lot 23 - \$334,000 (land only), a 3.20-acre lot on Merrymeeting Lake (“Lot 23”). The Taxpayer also owns, but is not appealing, Map 35/Lot 27, a 2.72-acre lot with an assessed value of \$9,000 (“Lot 27”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

At hearing the Taxpayer stated her presentation would focus only on Lot 23 because she had not assembled and notified the Town of comparables to contest Lot 2's valuation.

The Taxpayer argued the assessment of Lot 23 was excessive because:

- (1) it is accessed by a private unmaintained right-of-way;
- (2) it abuts and the right-of-way accessing it goes through an active gravel pit; and
- (3) the Town's abatement from \$360,000 to \$334,000 by reducing the frontage on Merrymeeting Lake from 182 feet to 132 feet was not done on a proportional frontage basis.

The Town argued the abated assessment was proper because:

- (1) the Town's sales analysis performed during the 2005 update indicated sales of vacant Merrymeeting Lake lots were in the \$400,000 - \$450,000 range even with less than ideal topography;
- (2) access to Lot 23, if developed, would likely be over the nonappealed lot, Lot 27, which was given a very conservative assessed value of \$9,000; and
- (3) the abatement for the reduced water frontage (50 feet less) on Merrymeeting Lake was calculated based on the methodology employed by the Town's assessing models where a quantity discount is given for lots with greater frontage; thus when the lot is reduced closer to the standard of 100 feet, the quantity discount was also reduced.

Board's Rulings

Based on the evidence, the board finds the Town's abated assessment of \$334,000 for Lot 23 is proportional with the market value evidence contained in the Town's 2005 update and subsequent sales ratio studies (Part of Municipality Exhibit No. B). In arriving at this conclusion, the board must consider the Taxpayer's other lots (including Lot 2 and Lot 27) because the supreme court has held the board must consider a taxpayer's entire estate to

determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayer's primary argument was that the adjoining gravel pit and private right-of-way significantly impacted the market value of Lot 23 and thus the assessment was excessive. However, the Taxpayer submitted no market evidence to support her contention. Nonetheless, a review of the photographs contained in Taxpayer Exhibit No. 2 and the parties' description of the adjoining gravel pit, the board concludes the gravel pit would likely be a factor that needs to be considered in valuing the Property. See Paras v. City of Portsmouth, 115 N.H. 63 (1975). (All factors affecting value must be considered in determining a proportional assessment). The Town presented all the applicable sales data on Merrymeeting Lake that occurred prior and subsequent to the 2005 update. The Town's assessor, Mr. Robert Estey, testified the topography around Merrymeeting Lake is often steep and, due to the limited number of remaining undeveloped parcels, sales of vacant lots on Merrymeeting Lake were in the \$400,000 - \$450,000 range (see particularly, the sale of Map 31, Lots 272 and 738 for \$478,000 and sale of Map 36, Lot 99 for \$450,000. The board finds the abated assessment of \$334,000 appears to account for the negative aspects of the gravel pit compared to those sales. Lot 23 is a 3.2 acre lot which adjoins Lot 27, the 2.72 acre non-appealed parcel. While both lots could be sold separately, it is quite likely and feasible that Lot 23 could be accessed through Lot 27 and thus one would not have to travel on the private right-of-way through the gravel pit to reach Lot 27. Both that potential access and the overall size of Lot 23 provides some buffer from the gravel pit for the area of Lot 23 near Merrymeeting Lake where a dwelling would likely be constructed. Consequently, the board concludes that while the gravel pit is a negative factor, the Town's abated assessment of \$334,000 compared to the two smaller lots that sold for \$450,000 to \$478,000 accounts

adequately for any negative impact of the gravel pit. Further, as the Town noted and the board agrees, Lot 27's assessment of \$9,000 is low. Mr. Estey testified that an average residential lot on a town maintained road had a market value of approximately \$65,000 in 2005 and that there were a number of sales of back lots for septic and access garages adjacent to Merrymeeting Lake in the \$15,000 - \$25,000 range. While Lot 27 is not on a town maintained road, it does provide the ability for Lot 23 to be accessed through it, and thus the \$9,000 value appears to be low compared to the sales of rear Merrymeeting Lake lots that were referenced by the Town at hearing.

Last, the board agrees with the Town that the correction for the frontage from 182 to 132 feet of frontage was properly done and reflects the market concept that larger parcels with either more frontage or area have a lower value on a per unit basis (square feet, acre or front foot) than lots with smaller area or smaller frontage. Thus, the calculation of the abatement utilizing the Town's assessment models which reduces the quantity discount is based on and reflective of that market phenomenon.

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.

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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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Josephine D. Crickett, 230 Pine Point Road, PO Box 103, New Durham, NH 03855, Taxpayer; and Chairman, Board of Selectmen, Town of New Durham, PO Box 207, New Durham, NH 03855.

Date: 7/18/08

Anne M. Stelmach, Clerk

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ORDER

The “Taxpayer” filed an August 13, 2008 Motion for Rehearing (“Motion”) of the board’s July 18, 2008 “Decision.” The Motion is denied.

The Taxpayer did not demonstrate the board erred in its Decision and, thus, the Motion failed to show any “good reason” to grant a rehearing. See RSA 541:3.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

CERTIFICATION

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Josephine D. Crickett, 230 Pine Point Road, PO Box 103, New Durham, NH 03855, Taxpayer; and Chairman, Board of Selectmen, Town of New Durham, PO Box 207, New Durham, NH 03855.

Date: August 27, 2008

Anne M. Stelmach, Clerk