

Gloria-Jean Leighton, Glen Fortier, Lisa Fortier and Susan McCaffrey

v.

Town of Milan

Docket No.: 22053-05PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 abated assessment of \$172,000 (land \$114,400; building \$57,600) on Map 195/Lot 44, a single family waterfront camp on 0.25 acres (the “Property”). The Taxpayers also own, but are not appealing, Map 195/Lot 43, a 0.12 acre island assessed at \$1,800. The parties stipulated Lot 43, the island property, is proportionally assessed. For the reasons stated below, the appeal for further 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) two appraisals performed by Ms. Peggy Gallus, a licensed New Hampshire appraiser, with effective dates of value of September 10, 2003 and October 10, 2005 (Taxpayer Exhibit Nos. 3 and 4), estimated the Property's market value (with the island included) to be \$90,000 and \$125,000, respectively;
- (2) the appraiser was "impartial" and did not have a contingency fee arrangement;
- (3) the Property's access is via a private dirt road and a shared driveway;
- (4) the Property has a seasonal, unwinterized camp built on pylons and is serviced by a dug well which becomes contaminated during heavy rains; and
- (5) the estimated value of the Property as of the assessment date (April 1, 2005) is \$113,300.

The Town argued the abated assessment was proper because:

- (1) it performed a full update of all assessments for tax year 2005;
- (2) the Town developed waterfront land value tables for each pond and the riverfront and applied these values consistently;
- (3) Ms. Gallus advised the Town's representative (Mr. David Woodward) her choice of comparable sales would have been different if the appraisals had been done for tax abatement purposes in that she would have limited her search for comparable sales to the Town and not other municipalities and the Taxpayers admit Ms. Gallus advised them not to use the appraisals for a tax abatement appeal;
- (4) the comparable sales presented in Municipality Exhibit No. A , especially Parcel 205-13, which sold for \$190,000 on February 16, 2004, support the assessment;
- (5) the Town granted an abatement to take into account the physical conditions noted by the Taxpayers by adjusting the depreciation to 15% (from 6%); and

(6) the Town adjusted the Property's land assessment for the steep topography and the shared driveway (with Lot 55).

The Town indicated the level of assessment was the median ratio of 101.7% in tax year 2005, as calculated by the department of revenue administration.

Board's Rulings

The board finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Assessments must be based on market value. See RSA 75:1. The Taxpayers submitted two real estate appraisals (Taxpayer Exhibit Nos.: 3 and 4). These appraisals were performed by Ms. Peggy Gallus, a state licensed real estate appraiser as of dates two years apart (September 2003 and October 2005). The Taxpayers relied on the two estimates of value contained in the appraisals to interpolate a market value for the Property of \$113,300 on April 1, 2005 (see Taxpayer Exhibit No. 2). Ms. Gallus did not attend the hearing and, therefore, was unavailable to defend her methodology, choice of comparable sales and to respond to cross-examination from the Town and/or questions from the board. For the reasons discussed below, the board finds it can place little weight on the appraisals' value conclusions.

First, the Town's representative, Mr. David Woodward, testified he spoke with Ms. Gallus and was informed the appraisals would have been done differently if they had been done for tax abatement proceedings. The appraisals, however, both purport to give an estimate of the Property's "market value" as of their effective date. The board understands the appraisals were done for different purposes. The first appraisal was done as a "time of death", estate appraisal for the estate of the Taxpayers' mother. The second appraisal was done to determine the value of the Property so that one of the owners could be "bought out. The board finds her

appraisals are less credible than the market value evidence submitted by the Town (discussed below) because it is not clear from reading them whether Ms. Gallus would have arrived at different estimates of value if her appraisals had been performed for different purposes.

Further, the board finds there are several conflicting statements in the appraisals compared to the testimony given by the Taxpayers at the hearing. Their appraiser identified the island as an amenity to the Property and added \$5,000 for its contributory value. The Taxpayers, in contrast, testified the island and the shallow water between it and the mainland caused the Property to have a “cove effect”, which is a detriment to the quality of the Property’s waterfront and its value. They further stated the island was an “obstruction.” While the Taxpayers testified the driveway the Property shares with the neighbors negatively impacts its value, their appraiser concluded the shared driveway has no adverse effect on the value of the Property. The board carefully listened to the Taxpayers’ arguments and thoroughly reviewed the photographs submitted (Taxpayers Exhibit Nos. 1 and 2). On balance, however, the board found their evidence was not sufficient to prove a disproportional assessment.

The Town, in Municipality Exhibit No. A, provided information questioning the true comparability of the sales chosen by the Taxpayers’ appraiser. For example, Mr. Woodward testified he personally spoke with the buyer of comparable sale #1 used by Ms. Gallus in her October 2005 appraisal (Taxpayers Exhibit No. 4) as well as personally inspecting the sale’s interior. His conversation and inspection revealed the sale’s inferior quality and condition when compared to the Property. Ms. Gallus, however, made no adjustment for these factors. In addition, Mr. Woodward spoke to the buyer of comparable sale #3 (also in Taxpayers Exhibit No. 4) and was informed the sale was considered a “lot” sale because the existing camp at the time of the sale was in rotted condition and was removed and replaced within a few years. The

Town indicated the sale of the property at Map 205/Lot 13 (Demers to Pearl) for \$190,000 in February 2004 was a better indication of the Property's market value than the comparable sales in the appraisals. The Town's un rebutted testimony calls in to question the quality and quantity of the adjustments made by the appraiser in the comparative sales analysis grid contained in the appraisals. The board acknowledges the nature of the evidence presented and recognizes the problem of appraising and assessing properties in a real estate market with such a limited number of qualified, arm's-length transactions.

Further, the Town testified it had applied the consistent assessment methodology used for the Property to all other properties in the Town. This testimony is some evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The Town presented extensive evidence, in Municipality Exhibit No. A to explain the differences in depreciation between the Property and other properties, including some on the same street (Overlook Road), included information on how it assessed waterfront properties in the Town and compared the assessment to sales of waterfront land in nearby towns. The board finds this evidence to be persuasive.

Therefore, based on the evidence and testimony presented, 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

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: Gloria-Jean Leighton, 20 Chesterfield Drive Concord, NH 03301, representative for the Taxpayers; David S. Woodward, Avitar Associates of New England, Inc., PO Box 307, Milan, NH 03588, contracted assessing firm for the Town; and Chairman, Board of Selectmen, Town of Milan, PO Box 300, Milan, NH 03588-0300.

Date: April 23, 2008

Anne M. Stelmach, Clerk