

Kenneth E. Peterson

v.

Town of Deerfield

Docket No.: 22265-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$257,100 (land \$221,800; building \$35,300) on Map 0201/Lot 040, consisting of a 0.230 acre lot on Northwood Lake at 20A Baker Avenue improved with a seasonal dwelling (the “Property”). 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.

The Taxpayer argued the assessment was excessive because:

(1) the lot is small, slopes steeply to the lake, has only curb side parking and is irregularly shaped;

(2) the lot is assessed higher than a larger, flatter parcel located just down the lake at Map 201 Lot 46; and

(3) the prior assessed land value should be increased no more than 271%, the average increase in the assessed land values for five nearby waterfront properties that occurred as the result of the 2005 reassessment; this increase results in a proper land assessment of \$197,000.

The Town argued the assessment was proper because:

(1) the Town was reassessed in 2005 by Avitar Associates of New England, Inc. (“Avitar”);

(2) an analysis (Municipal Exhibit No. A) of the four Northwood Lake sales that occurred in the Town within two years of the assessment date indicates the Taxpayer’s assessment is proportionate;

(3) the land condition factor was reduced from the average factor of 60 to 55 to account for the size and topography of the lot;

(4) Lot 46 has its lot value assessed differently because its dwelling was built on the “back lot” and is separated from the waterfront by Baker Avenue, the private access road to the lake lots; and

(5) the Taxpayer failed to carry his burden of proof because he focused only on the land portion of the assessment and the average percentage increase of the old assessment advocated by the Taxpayer is not a proper basis for determining current market value.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Town’s abated assessed value of \$257,100 was disproportionate.

First, assessments must be based on market value. See RSA 75:1. In determining market value, the board looks at the Property’s value as a whole (i.e., as land and buildings

together) because this is how the market views value. Moreover, regardless of how the existing assessment process may allocate the total value between land and building value, 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, however, presented no evidence of market value. Rather, he argued his land assessment should only increase by the average of five other waterfront properties' land assessment increases. The board finds this calculation does not necessarily lead to a proportional assessment nor does it conclusively prove the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages. Further, as the Avitar representative pointed out, there is no certainty the old assessments were proportional to market value. Indeed, the Town performed a reassessment in 2005 which improved the Town's level of assessment from 55.3% to 101.7% of market value (see department of revenue administration's median ratios for Deerfield at http://www.nh.gov/revenue/munc_prop/2005eqrpts.htm). The reassessment not only improved the level of assessment but also improved the equity significantly as evidenced by the lowering of the coefficient of dispersion (a statistical measure of assessment variance from the median ratio) from an unacceptable level in 2004 of 21.8% to 7.20% in 2005. These statistics verify that any calculation involving the old assessments is not reliably related to market value.

The board also finds the comparison of the Property's land assessment to that of Lot 46 does not establish disproportionality. The comparable is comprised of the "back lot" (Lot 46) and the "waterfront lot" (Lot 42) which cannot be sold separately. The dwelling was built on the larger back lot and thus to access the waterfront, one must cross the intervening Baker Avenue. The Taxpayer, notwithstanding the Property's small lot size, configuration and topography, has direct access to Northwood Lake from his dwelling without having to cross Baker Avenue. Thus, the access and ease of enjoyment relative to the waterfront is better for the Taxpayer than for Lot 46.

The board also finds the Town's analysis of the few waterfront sales that had occurred on Northwood Lake in Deerfield generally supports the abated assessed value. While it is difficult to definitively deduce the market value from such few diverse sales, the Town's analysis does attempt to quantify the differences between the Property and the comparables and the indicated market value range of \$239,946 to \$357,105 is the best evidence of market value submitted into the record. Furthermore, the board finds the 5% land condition factor adjustment made during the abatement process (from 60 to 55), reasonably accounts for the size and slope issues of the lot. The Town stated, and the Taxpayer did not dispute, the Property is at the low end of the market value spectrum of waterfront lots on Northwood Lake due to its size, topography, etc. The Taxpayer presented no probative market evidence the abated assessment was not reflective of that low end of the market value range and, in fact, the Town's analysis of the limited market evidence supports the abated assessment.

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

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: Kenneth E. Peterson, 1477 Main Street, Lynnfield, MA 01940, Taxpayer; Chairman, Board of Selectmen, Town of Deerfield, P.O. Box 159, Deerfield, NH 03037; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Representative for the Municipality.

Date: April 2, 2008

Anne M. Stelmach, Clerk