

**Margaret Chalmers and Judy L. Young**

**v.**

**Town of Pittsfield**

**Docket No.: 22897-06PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 abated assessment of \$184,400 on Map R9/Lot 3, comprised of a cottage located on 0.13 acres with 110 feet of frontage on Wild Goose Pond (the “Property”). The Taxpayers’ entire estate consists of a total of 1.03 acres with the remaining (0.90) acreage in the Town of Strafford. (The Taxpayers submitted as part of Taxpayer Exhibit No. 2 a copy of their 2006 tax bill from the Town of Strafford which indicated the 0.90 acres of the lot in Strafford was assessed at \$19,600.) 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, as abated, was still excessive because:

- (1) the Property has only 0.13 acres in Pittsfield with 110 feet of waterfront, but 25 feet are wetlands;
- (2) a comparison on a value per acre basis to another property on Wild Goose Pond (the “St. Hilaire property”, Map R09/Lot 5, in Taxpayer Exhibit No. 1) suggests the land should be assessed at \$34,439; and
- (3) an abatement should be granted to be proportional to the St. Hilaire property.

The Town argued the assessment, as abated, was proper because:

- (1) a town-wide revaluation was performed in tax year 2006;
- (2) it is inadequate for the Taxpayers to compare the Property’s assessment to only one other property in Pittsfield and that one other property may be underassessed (rather than proportionally assessed);
- (3) the Property was purchased for \$204,000 in December, 2005, just four months before the assessment date;
- (4) the portion of the Property in Pittsfield has the cottage on it and therefore the land was assessed as a buildable site;
- (5) a partial abatement was granted to the Taxpayers after taking into account the purchase price and the \$19,600 assessed value for the 0.90 portion of the lot in Strafford; and
- (6) no further abatement is warranted.

The Town presented evidence, not refuted by the Taxpayers, that the level of assessment in Pittsfield was 101.2 percent, as measured by the median ratio computed by the department of revenue administration.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers have not met their burden of proof and the abated assessed value of \$184,400 is proportional considering the Taxpayers' entire estate within both towns and their purchase of the Property in December, 2005 for \$204,000. The appeal is therefore denied.

RSA 75:1 requires that assessments, to be proportional, must be based on market value. Here, the board finds the best evidence of the Property's market value was the Taxpayers' purchase of the Property four months prior to the assessment date in December, 2005 for \$204,000. (Where it is demonstrated that the sale price of a Property was an arm's-length transaction, sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988)). While the Taxpayers expressed a belief they may have 'overpaid' for the Property, no compelling specifics or actual evidence was provided for the board to conclude that their purchase price did not reflect the market value of the Property at that time. The fact that the prior owners had only paid \$110,000 for the Property in 2001 does not establish the Taxpayers' 2005 purchase was excessive given the significant general market appreciation that had occurred in the interim. Also, the steep driveway and wetland portion of the frontage were factors that should have been readily apparent at the time of purchase. The board finds the sum of Pittsfield's abated assessment of \$184,400 and Strafford's 2006 assessment of \$19,600 equates exactly to the Taxpayers' purchase price and was, in fact, as testified to by Rod Wood, Pittsfield's assessor, the basis for the abatement.

The board has consistently held that when property is divided by a municipal boundary, the proper way to determine the assessment of such a property is first to value the taxpayer's estate as if it were all in one jurisdiction and then to allocate the total value between the two

jurisdictions. See Daniel McCoy v. Town of Hillsborough, BTLA Docket No. 21609-05PT (January 13, 2009) and Nancy C. and Arthur von der Linden, Jr. v. Town of New Hampton, BTLA Docket No. 12575-91PT (July 11, 1995). The Town of Pittsfield's thought process and abatement calculations are consistent with this approach.

The board also finds Pittsfield's methodology of valuing the building site and the water frontage that is associated with the cottage in Pittsfield is reasonable because the existence of waterfront and a buildable lot contributes significant value to the Property. The remaining portion of the lot, while larger in size, does not contain the waterfront or the footprint of the cottage site and, thus, the significant difference in value on an area basis is appropriate given that the sticks of the bundle of rights located within Pittsfield are significantly greater (waterfront and cottage site) than the largely undeveloped land in Strafford.

Further, the board is unable to give any weight to the Taxpayers' claim of over-assessment by their comparison of the lot value to the St. Hilaire property for three reasons. First, a portion of the St. Hilaire property in the Town of Pittsfield is more than four times the size of the Taxpayers' Property, 0.57 acres versus 0.13 acres. Doing a comparison on a straight line per acreage basis, as done by the Taxpayers, does not create a meaningful basis for market comparison. Differing square foot or acreage assessed values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per square foot prices for smaller lots than for larger lots and vice versa, and since the yardstick for determining equitable taxation is market value (RSA 75:1), assessments on a per square foot basis or price per acre basis can differ to reflect this market phenomenon.

Second, the shortcomings of such a calculation are highlighted by summing the Taxpayers' estimate for the land of \$34,439 with the cottage assessment of \$46,490 and the

Strafford land assessment of \$19,600. The total, \$100,529, is less than half of what the Taxpayers paid for the Property in December, 2005 and, thus, is an indication that a comparison, on a pure per acre basis, can significantly skew any relative indication of proportional assessments especially for lots of such small size. Said another way, the enjoyment and use of the bundle of rights of a waterfront property such as the Taxpayers can be embodied in lots of differing sizes and, when those rights are measured on an area basis, there is not a straight line value relationship.

Third, the Taxpayers presented no evidence that would allow the board to conclude the St. Hilaire property was proportionally assessed rather than underassessed. It is well established that the possible underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

Last, the Taxpayers argued approximately 25 feet of the frontage was not usable due to it being low and comprised largely of wetlands and that the driveway access was very steep to the lot. Because Pittsfield's assessment is consistent with the Taxpayers' purchase price of the Property, to the extent those negative attributes of the Property affected market value they are reflected in the Taxpayers' purchase and, consequently, in the related abated assessed value. Thus, no further consideration or adjustment for those features is warranted for the 2006 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(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

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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Margaret Chalmers and Judy L. Young, 128 Mill Pond Drive, Brewster, MA 02631, Taxpayers; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm; and Chairman, Board of Selectmen, Town of Strafford, PO Box 23, Center Strafford, NH 03815, Interested Party.

Date: February 23, 2009

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Anne M. Stelmach, Clerk