

Rita M. and Richard L. Lepine

v.

Town of Meredith

Docket No.: 22930-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$818,200 (land \$715,400; building \$102,800) on Map U38/Lot 8, a cottage on 0.68 acres (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.

Subsequent to the April 29, 2009 hearing, on May 8, 2009, the board took a view of the Property and two other properties held on the same date (#23092-06PT, Feigelman v. Meredith and #22796-06PT, Smith v. Meredith) along with views of many of the comparable sales utilized

in these three appeals. This decision is based on all the documentary and oral evidence presented by the parties along with the board's view of the Property and the comparable sales.

The Taxpayers argued the assessment was excessive because:

- (1) an appraisal prepared by Michael Lee of Loon Point Appraisal Services, LLC ("Lee Appraisal") estimated the market value of the Property to be \$684,000 on April 1, 2006;
- (2) the taxes increased disproportionately in relation to other properties in the Town; and
- (3) an abutting property (60 Veasey Shore Road) with a larger lot and better beach sold in July 2007 for \$715,000.

The Town argued the assessment was proper because:

- (1) the Town abated the Property's original assessment of \$952,000 to adjust for the waterfront's rocky and steep topography;
- (2) the adjustments to the comparable sales in the Lee Appraisal were not appropriate; and
- (3) the abutting property (60 Veasey Shore Road) was an estate sale, was unfinished as of April 1, 2008 and sold in December, 2008 for \$1,000,000 with only 40% of the new construction completed.

The parties did not dispute the Town's 2006 median level of assessment of 98.3% as determined by the department of revenue administration.

Board's Rulings

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

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society to contribute their share in support of government and that taxes levied to do so must be "proportional and

reasonable.” Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for the Taxpayers to carry their burden, they must present market value evidence to support their claim of disproportionate/overassessment. In this case, the Taxpayers bases for appeal are without merit for the following reasons.

The Taxpayers argued the Lee Appraisal supported a market value of \$684,000. Based on the Town’s testimony and the board’s views of the comparable sales utilized in the Lee Appraisal, the board finds the adjustments made to the comparable sales were not reasonable for the following reasons: 1) Comparable number 1 located at 48 Sachem Road, although similar to the Property, was adjusted downward by \$50,000 for superior condition; also, this property had an inferior view when compared to the Property but only a slight adjustment of \$5,000 was made to adjust for this difference; 2) Comparable number 2 located at 28 Observatory Road was likewise adjusted downward \$50,000 for its superior condition without any discussion as to how this adjustment was arrived at. Further, noted during the board’s view was the lot’s steep topography with approximately 30 steps to get to the deck level from the dock and no adjustment was made to reflect this significant topographical difference; and 3) Comparable number 3 at 114 Powers Road is located directly next to a marina, is located somewhat in a cove setting and has a limited view. These factors should have all been taken into consideration and adjusted for by Mr. Lee. Mr. Lee applied a downward adjustment of \$100,000 because this property had 200 feet of water frontage compared to the Property’s 100 feet but did not offset this adjustment for the inferior locational and limited view factors. As he did with the other comparables, Mr. Lee made a downward adjustment of \$50,000 for this sale’s superior condition without any explanation.

The board further finds the 60 Veasey Shore Road property was of questionable probative value because, as testified by the Town, this sale sold from an estate and resold for \$1,000,000 on December 17, 2008 with only 40% of the new construction completed.

For all of the comparable sales utilized in the Lee Appraisal, the board notes Mr. Lee did not contact the buyers, sellers or brokers to elicit specific information regarding the arm's-length nature of the sales. To verify sales data, an appraiser confirms statements of fact with the principles to the transaction, if possible, or with the brokers, closing agents, or lenders involved. Appraisal of Real Estate, Appraisal Institute, 11th ed., p. 401 (1996). Mr. Lee merely noted in his appraisal the information was derived from the MLS (multiple listing service) and "Town Records." In order to arrive at an appropriate indicated market value of the Property, all factors regarding each of the comparables should have been analyzed and properly adjusted with the basis for the adjustments discussed in the appraisal.

Based on its review of all the evidence submitted and the board's view of the Property and comparables, the board finds the Taxpayers failed to prove the Property is disproportionately assessed and the appeal is therefore denied.

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

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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Rita M. and Richard L. Lepine, 190 East Richardson Road, Dracut, MA 01826, Taxpayers; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: July 10, 2009

Melanie J. Ekstrom, Deputy Clerk