

Mark and Robin Feigelman

v.

Town of Meredith

Docket No.: 23092-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$1,463,500 (land \$725,800; building \$737,700) on Map U39/Lot 41, a single family home on 0.50 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in May 1999 for \$299,000; subsequent to the purchase, the preexisting cottage was torn down and a new house was constructed;
- (2) the Town has overstated the value of the dwelling as shown by a comparison of the assessed value of the home to the assessed values of all other homes on Cottage Road;

(3) the Property abuts the Town's public beach on one side and has a shared driveway on the other side littered with "garbage";

(4) the Property should be assessed as water access because the depth of the water is limited (approximately 6 to 12 inches for about 200 feet) due to the erosion of sand from the public beach thus requiring an unusually distant mooring for their boat; and

(5) the assessed value of the dwelling should be \$500,000 and the land \$440,000 for a total assessment of \$940,000.

The Town argued the assessment was proper because:

(1) the Town prepared a comparative market analysis comparing the Property to four sales which, when adjusted for differences in time, effective age, effective area, lot size and waterfront indicated the assessment was proportional;

(2) a negative 5% condition factor was applied for the driveway and a negative 5% factor was applied for the Property's topography and access to the lake which equated to approximately \$40,300; and

(3) no adjustment was made for the Property's proximity to the Town beach.

The parties stipulated the median level of assessment in the Town for tax year 2006 was 98.3% as determined by the department of revenue administration.

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 (#22930-06PT, Lepine 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.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$1,424,600.

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.

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

Further, in making its findings where there is conflicting evidence, the board must determine for itself the creditability of the witnesses and the weight to be given the testimony of each because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994). As a consequence, the board utilized its judgment in analyzing the evidence (including the view) in arriving at its conclusion that a further adjustment to the assessment’s land component is warranted on the Property.

The Taxpayers raised a question as to whether the Property was proportionately assessed when compared to similar properties which were not subject to the Property's limitations, i.e., shared driveway, topography/access to the lake and proximity to the Town beach. Based on its view of the Property and the several comparable sales utilized in the three appeals indicated above, the board finds an additional adjustment is necessary to the land component of the Property given its proximity to the public beach and the shallow depth of the water along the frontage of the Property. The board concurs with the Taxpayers the depth of the water is extremely shallow for a distance of approximately 200 feet¹ thus access to the lake requires mooring a boat rather than tying to the dock. The board further noted the public beach being very visible from the Property's dock. The board finds an additional negative 5% adjustment to the land component is appropriate for a total of 15% adjustment for the proximity to the public beach, the topography/access to the water and the shared driveway. Applying this adjustment indicates an assessed value of \$1,424,600 (land \$686,900; building \$737,700). The board finds this assessment is appropriate and results in an assessed value slightly below the low end of the range of the equalized assessed values in the Town's comparative market analysis.

If the taxes have been paid, the amount paid on the value in excess of \$1,424,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

¹ One board member actually walked approximately 100 feet into the water and visually confirmed from that distance the Taxpayers' assertion of the shallowness to a distance of approximately 200 feet.

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

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: Mark and Robin Feigelman, 7 Brewer Drive, Westborough, MA 01581, Taxpayers; and Chairman, Board of Selectmen, Town of Meredith, 41 Main Street, Meredith, NH 03253.

Date: July 10, 2009

Melanie J. Ekstrom, Deputy Clerk