

Richard J. Barrett Revocable Trust 2003

v.

Town of Moultonborough

Docket No.: 23130-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of: \$1,120,100 (land \$916,900; building \$203,200) on Map 272/Lot 46, a single family home on 1.50 acres (the “Property”). The Taxpayer also owns, but is not appealing, Map 272/Lot 020, a vacant lot assessed at \$158,400. 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, through its trustee, Mr. Richard J. Barrett, argued the assessment was excessive because:

- (1) the Property does not have a breakwater which limits the Taxpayer's ability to enjoy the waterfront area;
- (2) the Property's water frontage has not been assessed consistently when the assessments of other waterfront properties are considered;
- (3) several other properties have features which have been minimally assessed or not assessed at all;
- (4) the dwelling's living area is not accurately described on the assessment-record card and its quality of construction and overall condition is fair; and
- (5) the Property's assessment should be \$1,000,000 based on an appraisal prepared for the Taxpayer's 2004 and 2005 tax abatement appeals which were ultimately settled prior to hearing.

The Town argued the assessment was proper because:

- (1) the 2004 appraisal is irrelevant to the instant (2006) appeal;
- (2) an analysis using four comparable sales and one listing (a property for sale but not yet sold) indicates the Property is not over assessed; and
- (3) the Town has accounted for the dwelling's condition and structural problems through depreciation adjustments to the replacement cost in the "cost/market valuation" section of the assessment-record card.

The Town testified it used the median ratio as the general level of assessment determined by the department of revenue administration to equalize assessments. In 2006, the Town's median was 95.8%. The Taxpayer did not dispute this ratio.

Board's Rulings

For the following reasons, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

In order to prevail, the Taxpayer has the burden of proving the market value of the Property was less than approximately \$1,170,000 (\$1,120,100 assessment divided by the 95.8% general level of assessment = \$1,169,207). Assessments must be based on market value.

See RSA 75:1. The focus of a tax abatement appeal is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing. See, e.g., Appeal of Andrews, 136 N.H. 61, 64 (1992); and Appeal of Town of Sunapee, 126 N.H. 214, 219 (1985). Mr. Barrett testified the Property's market value was \$1,000,000 in 2004 through 2006 and something less in 2007 and 2008. In support of his conclusory statement the Taxpayer provided an appraisal which estimated the Property's April 1, 2004 market value to be \$1,000,000. This appraisal had been prepared for and used during negotiations with the Town regarding the Taxpayer's 2004 and 2005 property tax appeals which were eventually settled and the Taxpayer acknowledged "this was a settlement not a permanent change in the assessed value." (See Taxpayer Exhibit No. 1). The board finds that while the Taxpayer's appraisal was used in the settlement negotiations for the Taxpayer's 2004 and 2005 tax appeals, it apparently was not the sole basis for the settlement reached by the parties. If the appraisal had been the only basis of the settlement, the Town would have multiplied the appraisal's \$1,000,000 market value estimate by the Town's 2004 and 2005 equalization ratios, 96.0% and 96.7%, respectively, to determine the assessments based on the appraisal. There was no evidence the Town performed those calculations.

After a review of the testimony and the parties' submissions, the board finds the Town's analysis provides the most probative evidence of the Property's market value on April 1, 2006. The Town's analysis and \$1,150,000 market value estimate was based on four comparable sales and one comparable listing of properties similar to the Taxpayer. As the Town noted, three of the comparable sales and the comparable listing were all located on the south shore of Long Island in similar locations to the Property. This side of the island provides the most direct access to the large portion of Lake Winnepesaukee. The Town further testified the adjustments made on the sales adjustment grid in the analysis were the same adjustments contained in the Town's computer assisted mass appraisal ("CAMA") system and were consistently applied to all properties in the Town.

The Taxpayer questioned the accuracy of the Town's analysis and asserted the Town's note on its sales analysis grid "comparables 1 & 3, from the same neighborhood, were weighted the most" was not true. We find the Town's indicated market value is supported both by giving more weight to sales 1 and 3 and by the median indicated value of the adjusted sale prices of the Town's five comparables.

Also, in Taxpayer Exhibit No. 1, the Taxpayer disputed the Town's calculation of the dwelling's gross living area and detailed several attempts by the Town to accurately estimate the house's above grade living area. The Town acknowledged its CAMA system's software could not accurately dimension the house apparently due to its unique design and layout. However, the board finds the 1,995 square foot gross living area used in the Taxpayer's appraisal is close to the 2,023 square foot total on the Town's assessment-record card and the difference is insignificant in determining a proportional assessment.

The Taxpayer further asserts the lack of a breakwater, which many nearby properties have, decreases the Property's value. The Taxpayer estimated the cost to build a 100 foot breakwater with a "dog leg" would be approximately \$35,000. The Town testified it did not assess breakwaters in 2004 but, since 2005, their area (square footage) has been included in the land value section of the assessment. The Taxpayer testified this methodology, which adds a relatively small area to any property's total area, significantly understates a breakwater's value. The board finds that while a breakwater is a positive factor affecting utility and market value of such exposed lots, its cost to cure (approximately \$35,000) is only 3% of the Taxpayer's overall market value. Further, from the photographs included in the parties' submissions, the Property's view and well-groomed landscaping may partially offset the lack of a breakwater. As a result, the board finds the lack of any specific adjustment to the assessment for the lack of a breakwater does not result in a disproportionate assessment. "There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to a municipality's general level of assessment, represents a reasonable measure of one's tax burden". See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979). Additionally, the Town testified any contributory value for a breakwater found in its comparable sales analysis is included in the land values although not specifically adjusted for.

In further support of its position, and through testimony and Taxpayer Exhibit Nos. 1 and 2, the Taxpayer presented several comparisons of the Property to other waterfront properties in similar locations where the Taxpayer believes the Town used an inconsistent methodology. For example, the Taxpayer provided the assessment-record cards for properties which had some improvements which were not being assessed. Some of these features included ramps down to the water, raised beaches, stone walls and heated driveways. The Taxpayer also asserted there

were properties with some improvements which were minimally assessed compared to their value including large brick patios, garages and boathouses. As stated previously, however, assessments must be based on market value and the courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other similar properties. There may be some inaccuracy in the assessments of the properties reviewed and compared to the Property; however, the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). Although it is not inappropriate to consider the various components of a property's assessment, the board must focus its decision on the value of the Property as a whole. 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. The board finds these assessment comparisons to be insufficient evidence to carry the Taxpayer's burden. Disproportionality is always relative to market value; a finding of variability in assessments between properties does not establish disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899).

In addition to the analysis including the comparable sales, the Town testified, and we agree, the adjustments made on the assessment-record card in the "cost/market valuation" section under the functional obsolescence and depreciation headings, were made to account for the issues raised by the Taxpayer including the dwelling's structural problems and layout as well as the fact the dwelling showed more wear and tear (physical depreciation) than a typical dwelling that was constructed in 1995.

For all the previously discussed reasons, the board finds the Taxpayer did not carry its burden to prove the Property was disproportionately assessed and the appeal is 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 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: Richard J. Barrett, Trustee, Richard J. Barrett Revocable Trust 2003, 134 West Point Road, Moultonborough, NH 03254, Taxpayer; Chairman, Board of Selectmen, Town of Moultonborough, PO Box 139, Moultonborough, NH 03254; and Kevin T. Leen, Vision Appraisal Technology, 44 Barefoot Road, 2nd Floor, Northborough, MA 01532, Contracted Assessing Firm.

Date: March 27, 2009

Anne M. Stelmach, Clerk