

John and Kathleen Mitchell

v.

Town of Canterbury

Docket No.: 23133-06PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2006 assessments of: \$18,800 on Map 2/Lot 207 (“Lot 207”), a vacant 0.25 acre lot; and \$225,000 on Map 2/Lot 212 (“Lot 212”) (land \$150,000; building \$75,000), a 0.25 acre lot improved with a single family home (the “Properties”). The Taxpayers also own, but did not appeal, the \$4,500 assessment on Map 2/Lot 222 (“Lot 222”), a 0.25 acre lot with a shed. For the reasons stated below, the appeals for abatement are granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were 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 Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessments were excessive because:

- (1) an “Appraisal” prepared by Craig H. Porter of Appraisal Solutions of New England estimated the combined market value of Lots 212 and 222 to be \$183,000 as of December 23, 2006;
- (2) the Properties are not on a town maintained road and, therefore; do not receive the same level of services as most other properties in the Town;
- (3) there was an “astronomical” increase in their taxes from approximately \$2,000 to almost \$5,000 in one year; and
- 4) the methodology the Town used to set the values for waterfront properties cannot be understood.

Based on a June 2008 inspection of the Properties and the Taxpayers’ testimony, the Town recommended the assessments be adjusted to \$201,300 for Lot 212 and \$11,000 for Lot 207 and argued the recommended assessments were proper because:

- (1) the Town followed a consistent methodology when the revaluation was performed;
- (2) only sales of properties in the Town were used to create the assessment models followed to set the individual assessments for all properties;
- (3) land valuation tables were created using a “land residual” technique rather than relying solely on a very small number of vacant land sales; and
- (4) the recommended assessments were fair given the three waterfront sales submitted as Municipality Exhibit A which show the indicated range in values for the pond.

The parties stipulated the level of assessment in the Town was 99.1% for tax year 2006. They further stipulated the assessment on Lot 222 which contains part of the septic system for Lot 212 is not at issue and is not part of this appeal.

Board's Rulings

Based on the evidence and testimony, the board finds the proper assessments to be \$201,300 for Lot 212 and \$7,500 for Lot 207.

Lot 212

A Town wide revaluation was performed in 2006. During the revaluation, the assessors were unable to perform an interior inspection of the dwelling on Lot 212. After the Taxpayers filed their appeal, the board ordered the parties “to meet and attempt to settle this matter before a hearing is scheduled.” (See board’s March 25, 2008 “Order”). In compliance with the Order, the Town inspected the interior of the dwelling and the parties met on June 25, 2008 and attempted to settle the appeal. Although a settlement was not reached, the interior inspection prompted the Town to make revisions to the assessment and to create a new assessment-record card (Municipality Exhibit G). The revisions were made to more accurately depict the dwelling and land of Lot 212. They included: 1) an adjustment to the land value for the fact that part of the septic system for the dwelling is located across the street on Lot 222 (which is owned by the Taxpayers but is not part of this appeal); 2) an adjustment to the dwelling’s “year built” which triggered some additional depreciation; 3) a more accurate description of the wall and floor materials; and 4) an increase in the functional depreciation to better reflect the access and condition of the basement and to recognize any other issues unique to the dwelling. In total, these revisions reduced the assessment of Lot 212 from \$225,000 to the Town’s recommended assessment of \$201,300. The Town testified Lot 212’s revised assessment was arrived at using the same methodology used in assessing other properties in the Town. The Town submitted a spreadsheet of all sales used in the Canterbury ratio analysis (Municipality Exhibit F) as well as the sales by strata (Municipality Exhibits A through E) to support its methodology. This

testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers submitted the Appraisal (Taxpayer Exhibit No. 1) as evidence Lot 212 was overassessed. The appraiser who prepared the Appraisal, however, did not attend the hearing. The board finds it cannot give the Appraisal any weight for several reasons. First, three of the four comparable sales in the Appraisal are not transfers of waterfront properties. Although the appraiser made an adjustment for this fact, the board, based on its experience¹, finds the adjustment significantly understates the additional value a typical buyer would place on a waterfront property versus a similar but nonwaterfront property. Second, two of the four comparable sales required an adjustment for the Properties view of the pond. Again, the magnitude of this adjustment is questionable and the appraiser did not provide any basis for his reasoning. Third, the appraiser does not state anywhere in the Appraisal that he confirmed any of the specifics regarding the comparable sales with a party to the transactions. It is a fundamental appraisal procedure to “[v]erify the information by confirming that the data obtained is factually accurate and that the transactions reflect arm’s-length market considerations. Caution should be exercised when sales data is provided by someone who is not a party to the transaction.” The Appraisal of Real Estate, 12th edition at p. 421. “To verify sales data an appraiser confirms statements of fact with the principals to the transaction, if possible, or with the brokers, closing agents, or lenders involved.” Id. at p. 423. The value indications provided by the comparable sales can have little credibility if the starting point for any adjustments is in question. For all the reasons discussed and as previously stated, the board gives

¹ The agency’ experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

no weight to the Appraisal's conclusion. Conversely, the board finds the Town's testimony and evidence persuasive regarding how it determined the recommended assessment for Lot 212 and orders the \$201,300 recommended assessment be applied to Lot 212.

Lot 207

During the hearing, the Town testified it was willing to revise the assessment from \$18,800 to the \$11,000 value contained in the Taxpayers' appeal document. The board, however, finds a larger reduction is warranted. The Taxpayers testified Lot 207 had been advertised for sale on the open real estate market with an asking price of \$10,000 for two years prior to the Taxpayers acquiring it for a final sale price of \$5,000. The Town did not present any evidence or testimony to indicate the Taxpayers' purchase was not an arm's-length transaction. Where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the best indicators of the Property's value. Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). For these reasons, the board has revised the assessment of Lot 207 to \$7,500. The Town testified the land values used in the revaluation were determined using a land residual analysis due to the small number of sales of vacant land in the Town. While this is an acceptable methodology to determine general land values, Lot 207 has some unique features which are listed on the assessment-record card including the fact there are "multiple culverts which drain into lot" and that it is "unbuildable." The board recognizes the fact the Town made an attempt to account for these factors by adjusting the land value by applying a 25% "condition" adjustment (reducing the value by 75%). The board finds the actual sale of Lot 207 for \$5,000 after prolonged exposure in the real estate market, supports a further reduction and the board finds a land condition factor of 10% is more reasonable which yields the revised assessment of \$7,500 ($\$75,000 \times 0.10 = \$7,500$). This assessment value shall be used by the Town for Lot 207.

The Taxpayers raised several concerns regarding the amount of taxes they had to pay and the “astronomical” increase between the 2005 and 2006 tax years. Increases from past assessments however, are not evidence that a taxpayer’s property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). Further, the Taxpayers testified the significant increase and the high amount of taxes may preclude many people for being able to afford waterfront properties. The amount of property taxes paid by the Taxpayers was determined by two factors: 1) the Properties’ assessments; and 2) the municipality’s budget. See generally International Association of Assessing Officers, Property Assessment Valuation , pp. 4-8 (2nd ed. 1996). The board’s jurisdiction is limited to the first factor, i.e., the board decides if the Properties were overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Id. The board, however, has no jurisdiction over the second factor, i.e., the municipality’s budget. See Bretton Woods Co. v. Town of Carroll, 84 N.H. 428, 430-31 (1930) (abatement may be granted for disproportionality but not for issues relating to town expenditures); see also Appeal of Land Acquisition, 145 N.H. 492, 494 (2000) (board’s jurisdiction limited to those stated in statute).

The Taxpayers provided testimony concerning issues with the Property, including the fact that it is not a town maintained road and does not receive the same level of services as properties that are located on town maintained roadways. However, the Taxpayers did not provide any market supported data to quantify what affect, if any, the various issues raised would have on the Property’s market value.

In summary, the board finds the assessment for Lots 212 and Lot 207 shall be \$201,300 and \$7,500 respectively.

If the taxes have been paid, the amounts paid in excess of \$201,300 for Lot 212 and \$7,500 for Lot 207 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 assessments. 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 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

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: John and Kathleen Mitchell, 106 Canterbury Shore Drive, Canterbury, NH 03224, Taxpayers; Chairman, Board of Selectmen, Town of Canterbury, PO Box 500, Canterbury, NH 03224; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, N.H. 03301, Contracted Assessing Firm.

Date: November 21, 2008

Anne M. Stelmach, Clerk