

Karlya J. Wheeler

v.

Town of Canaan

Docket No.: 23203-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 combined “assessment” of \$226,500 (land \$155,100; building \$71,400) on two lots designated as Map 1-F/Lot 62 and Map 1-F/Lot 76 (collectively, the “Property”). “Lot 62” is a single family home (located at 840 Goose Pond Road), consisting of 0.34 acres and “Lot 76” is an undeveloped lot across the road that fronts on Goose Pond, consisting of 0.04 acres. 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 argued the assessment on the Property was excessive because:

- (1) the two lots were purchased separately, Lot 62 in 1989 and Lot 76 in 1996, and in prior years the Town made separate assessments on each lot;
- (2) when the Town performed a reassessment in 2006, the assessment for Lot 76 was reduced to zero and Lot 62 was treated and assessed as a water access lot with increased value;
- (3) Lot 76 is unbuildable and other property owners have rights to it which are reflected on a recorded deed;
- (4) the State of New Hampshire owns “90% of the beach” and the Taxpayer has to lease the right to cross over the beach to get to the water from the State’s Water Resources Council (“WRC”);
and
- (5) the land value is much lower than reflected in the assessment and the total value of the Property is \$175,000, resulting in a substantial abatement.

The Town argued the assessment on the Property was proper because:

- (1) the Town performed a statistical update in 2006 which included an analysis of “Goose Pond,” where the Property is located, and requested and received information from the State of New Hampshire, in an effort to identify which properties actually owned waterfront land or had water access;
- (2) the Town’s analysis of improved and unimproved Goose Pond property sales prepared in connection with the 2006 statistical update (contained in Municipality Exhibit A) indicates Goose Pond properties with water access have substantially higher values, as reflected in the assessment on the Property; and
- (3) the Taxpayer did not meet her burden of proving disproportionality.

The hearing record was kept open for five days to allow the Taxpayer to submit a copy of the warranty deed to Lot 76 and a copy of the WRC license she referred to in her testimony and for the Town to submit a copy of a January 2001 quitclaim deed referenced on the Richard Brown assessment-record card. Having received these documents from the parties, the board will now proceed to make its rulings.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

The warranty deed (dated December 7, 1996) and the WRC license (dated May 1, 2007) confirm the Taxpayer's testimony regarding Lot 76. Specifically, the warranty deed states Lot 76 is "subject to the right of others to use said property located between the westerly side of the road and the easterly side of Goose Pond for recreational purposes, in common with others." The WRC is the fee owner of "all land under the water and abutting the water up to elevation 107.5 (local datum) and the right to flow water over the land of others up to elevation 108.5 (local datum) or Goose Pond Road, whichever first occurs...." Thus, in order to access Goose Pond for recreational purposes from Lot 76, the Taxpayer requires a license, with an annual fee of \$500.

Lot 76 is comprised of two, small, disconnected triangles of land on the west side of Goose Pond and the beach is several hundred feet from the home on Lot 62. One user, Richard Brown, shares a portion of the cost for the annual license (\$167) and shares use of the 175 square foot triangular piece of the lot, where he has docks, boats and lawn chairs. The Taxpayer presented assessment-record cards for the Helen Skeist and Raymond Stone properties, stated they had water access rights via her Lot 76 and noted they were not assessed separately for this

water access. She argued that because Lot 76 is encumbered by the access rights of other lots, and because the Town previously assessed it separately for only \$6,000, the Town should continue to do so at this amount and reduce the assessment of Lot 62. The board has reviewed a prior appeal filed by the Taxpayer for the same Property. Karlya J. Wheeler v. Town of Canaan, Docket No.: 20544-03PT (January 27, 2006). In that appeal, the Taxpayer did not contest the Town's tax year 2003 assessment on Lot 76 (\$6,000), but did contest the assessment on Lot 62 and did mention that several lots "have deeded easements across. . . Lot 76." The board granted a modest abatement on her entire estate (from \$118,500 to \$111,600 for both lots). At the hearing, the Taxpayer acknowledged that the present appeal involved the "same" arguments and issues as the prior appeal.

The New Hampshire Constitution's requirement in pt. II, art. 5 that assessments be "proportional and reasonable" is achieved if assessments are proportional to market value. See RSA 75:1. To succeed on a tax abatement claim, a taxpayer has the burden of proving by a preponderance of the evidence that he or she is paying more than his or her proportional share of taxes. This burden can be carried by establishing that a taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which the property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-368 (2003).

In this case, the board finds the Taxpayer did not submit any market evidence to support her position that the Property was overassessed notwithstanding her belief a market value for the Property (as a whole) of \$175,000 was appropriate.

In comparison, the board finds the Town's representative supplied good evidence of its market value. The Town performed a statistical update in 2006 and analyzed sales of improved lots, without water access, located one street back from Goose Pond which indicated \$70,000 lot

values. The Town further analyzed sales of improved properties one street back from Goose Pond, with water access, which indicated lot values of \$157,500. To determine which property owners had access to Goose Pond, the Town inquired of and received documentation from the WRC as to who had leases with the State. This information was utilized in the Town's determination of its Goose Pond land base rates. With respect to the Helen Skeist and Raymond Stone properties, they were assessed as lots without water access because no evidence was provided from WRC that a license had been issued in their names. With respect to the Richard Brown property, the Town was unaware that Mr. Brown's water access was via Lot 76 but was aware that he had deeded water access and the assessment was based on that knowledge. The notation on the assessment-record card "see 1/2001 deed", which the board questioned and was provided, appears to be a deed from related parties and thus has no relevance to the assessment.

The board finds, based on the evidence, the assessments of the Taxpayer's comparables are not indicative of the overassessment of the Property. First, it appears and the Taxpayer was unsure that the Skeist and Stone improvements are seasonal (the improvement portion of the assessment-record cards was not provided by the Taxpayer) and the Taxpayer's Property is a year round residence. There was also no evidence submitted to indicate the Skeist and Stone properties have water access. The Brown property is a year round residence and a water access property and a comparison of the land valuation with the Taxpayer's land value supports the Town's testimony and evidence of consistent methodology. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). Further, if in fact, the Skeist and Stone properties do have water access and thus were underassessed by the Town, the underassessment of other properties does not prove the over

assessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of the alleged underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. 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. Id.

With respect to how the Town actually assessed the Property (as one economic unit), the board notes its findings in the 2003 decision at pp. 3 and 4 which stated: "despite the fact the evidence indicates they were acquired and could be sold separately by the Taxpayer, the board concludes their highest and best use is as one economic unit because of the water access Lot 76 provides and the relative proximity of the two lots." Therefore, the board finds the methodology utilized by the Town in assessing the Property was proper 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.

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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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Karlya J. Wheeler, 840 Goose Pond Road, Canaan, NH 03741, Taxpayer; Chairman, Board of Selectmen, Town of Canaan, PO Box 38, Canaan, NH 03741; and Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: January 30, 2009

Anne M. Stelmach, Clerk