

Andrew K. Lewis

v.

Town of Walpole

Docket No.: 23365-07PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$347,500 (land \$79,700; building \$267,800) on Map 1/Lot 15/10, a single family home on 2.70 acres (the “Property”). The Taxpayer also owns, but is not appealing, Map 1/Lot 15/11, an adjoining lot containing 2.50 acres with an assessed value of \$41,500. The parties agreed this lot was reasonably assessed. For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the house (“structure”) was built as a prototype and is the only structure of its kind in the world according to the US Patent office; the “innards” of the home depart from the conventional home with floors on a slab, ceilings bare concrete painted, concrete countertops and conventional sheetrock in the kitchen and dining area with the remaining walls being rough pine;
- (2) an appraisal prepared by W.M. Borchers (the “Borchers Appraisal”) estimated the market value as of November 9, 2007 to be \$305,000;
- (3) Cynthia M. Westover, Broker/Co-Owner of Galloway Real Estate indicated the property would be a “nightmare” to sell and recommended a listing in the \$230,000 to \$250,000 range (the “Westover Opinion”); and
- (4) an analysis of six neighboring properties with more acreage, all with garages (the Property having a carport) most on higher, drier lots with better landscaping and several with more interior space and bedrooms all support the assertion the Property is overassessed.

The Town argued the assessment was proper because:

- (1) the Borchers Appraisal appraised the Property as of November 2007 and negatively adjusted comparable #2 to the date of assessment (April 1, 2007) when the market was appreciating during that time period;
- (2) the Westover Opinion is dated January 18, 2010 and the market has seen a decline from 2008 through 2010;
- (3) the Property is uniquely designed, a one of a kind home, and this is reflected in the quality grade of Average +20;
- (4) the Property would be more difficult to sell as it would appeal only to a limited market and the Town has adjusted the home by 5% for its functional utility.

The department of revenue administration's 2007 median ratio of 100.1% was not disputed by the parties as a reasonable indication of the Town's level of assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$294,700 (land, \$72,000; building, \$222,700). This abatement is based upon applying a 10% condition factor to the land for the building site being below road grade and an additional 15% functional obsolescence to the dwelling for its unique construction and design.

Because of the uniqueness of the Property, the board took a view with the parties on June 17, 2010. A brief description of the Property based on the board's view and the Taxpayer's description is appropriate. As the Taxpayer described, the dwelling is a prototype of a design concept that he had hoped to market and mass-produce for various building applications. The basic concept is the construction of insulated reinforced concrete arched modules that can be joined in various configurations to provide open span interior spaces, in this case, suitable for residential use. The open ends of the arches are framed in a traditional manner, insulated, and sided and accommodate windows and exterior doors. The dwelling is located on a sloping below grade site which allows for multi-level living space to provide some separation of use without the traditional hallways and doors that conventional construction provides. Overall, the board found a pleasing interior contemporary open design with windows on the arched ends of the modules that allow the integration of the interior of the house with the exterior setting. The modules are anchored to the slabs creating living space at various heights and there is no basement. The Taxpayer created a unique flooring surface by scoring the concrete slabs and treating the surface with muriatic acid to produce a pleasant rose colored marbled surface.

The upper non-slab floors have scored oriented strand board stained and finished to provide a simple but also pleasing floor surface.

The board agrees with the parties that the Property is difficult to value with any certainty given its one of a kind unique design by the Taxpayer and the limiting of market appeal such design has. The Town's representative, Ms. Loren Martin of Avitar Associates of New England, Inc. ("Avitar") indicated there were no sales in Walpole or any of the towns which she represents of homes of similar unique design from which to estimate a market derived factor.

While in Walpole, the board also viewed the Taxpayer's immediate neighbor and the sales submitted by the Town. Generally, all of the immediate neighborhood properties and the Town's sales were of more conventional capes/log cabins and less square footage of living area.

As a general proposition, municipalities must consider all factors relevant to market value when assessing property. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). In estimating the Property's market value, the board considered the following factors.

On the positive side, the board, as noted earlier, observed a pleasing contemporary open design dwelling. The lower level of the Property includes a separate apartment that, while not totally separate from the other living space, does provide additional living space with its own kitchen, bathroom and exterior egress. The resulting total living area of 3,227 is larger than many of the newer dwellings viewed by the board. The flooring, as described above, while simple in material, resulted in a pleasing and low maintenance floor surface.

On the other hand, several factors would negatively affect the Property's value. The building site, as noted on the assessment-record card and as seen by the board on the view, lies in a "low lying gully" presenting drainage issues and snow plowing challenges in the winter. While the Taxpayer has situated the dwelling pleasantly on this site, the board believes the market

typically values at grade or slightly above road grade sites more favorably. The site has no view from it other than of the surrounding woods and the open lawn area adjacent to the building.

Thus, overall, the Taxpayer's site would be considered inferior to many other sites.

The greatest factor affecting the Property's value is its unique design and construction. The board finds this would significantly limit the market participants interested in such a property and would present some on-going unique maintenance requirements. Part of the unique design is the dwelling's multi-level layout with few traditional hallways and doors common to conventional homes. While the board finds the layout is generally well planned, it could be so unique so as not to be desirable to a wide sector of the market. Another atypical feature is the main galley kitchen and the very tight apartment kitchen not being more open as most conventional homes that usually combine the food preparation and family/entertainment functions in an open space.

In addition, the Property is built entirely on a slab which provides for very limited storage space as compared to more conventional homes with full basements and garages. The Property has an arched open carport which, as the Taxpayer indicated, barely provides snow coverage for one vehicle in the winter. This lack of storage could be overcome by constructing a garage but it is questionable if the site or the adjoining lot has readily available terrain other than the area already utilized by the 10 x 14 foot shed on the adjoining lot.

The board did review both the appraisal performed by W.M. Borchers which estimated a market value of \$305,000 as of November, 2007 and the letter from Ms. Westover of Galloway Real Estate indicating a market value range of \$230,000 to \$250,000. The board is unable to give any extensive weight to either opinion of value, again, largely due to the uniqueness of the

Property but also because those individuals were not present at the hearing to explain their opinions and answer questions.

In reviewing the assessment-record card, the two primary “drivers” of value are the Average +20 quality rating and the relatively large square footage of 3,227 square feet. The board acknowledges the quality rating for a unique property such as the Taxpayer’s is somewhat subjective; nonetheless, based on the board’s experience of Avitar’s grading system, the overall quality of the dwelling and the interior finish is above average quality in nature and thus an Average +20 rating is not unreasonable. The large square footage is largely a result of the presence of the separate apartment on the lower level which is a positive attribute and certainly needs to be recognized in any valuation of the Property.

However, the combined effect of the quality rating and the square footage needs to be tempered by the unique design. Thus, utilizing its judgment,¹ the board has estimated a total functional depreciation of 20% (or 15% more than that applied on the Town’s assessment-record card) is appropriate to recognize the discounting necessary to account for limited participants in the market accepting of its unique construction and maintenance features. In estimating this factor, the board reviewed the Town’s comparables as they do provide insight as to the value of what certain 1,800 to 2,500 square foot conventional houses of average to slightly above average quality are selling for in Walpole. The Taxpayer’s above quality interior and larger square footage (largely due to the apartment) are likely offset by the negative unique design and maintenance considerations of the dwelling. Thus, the board has estimated the Property would

¹ 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. City of 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)

need to be discounted so that it is comparable in value to the upper end of the market value of the sales of approximately \$290,000 to \$300,000 submitted by the Town.

Such an adjustment is not an exact science, it is based on weighing the positive and negative attributes of the Property as discussed above and is the board's best estimate to result in an assessment that is proportional to market value, a concept for such a unique property that is rarely ever borne out in sales. Consequently, a total depreciation of 26% (6% normal physical and 20% functional) has been applied to the dwelling along with a negative 10% condition factor to the lot for it being below road grade.

If the taxes have been paid, the amount paid on the value in excess of \$294,700 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 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

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must be filed within thirty (30) days of the date on the board's denial with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Andrew K. Lewis, 102 Blackjack Crossing, Walpole, NH 03608, Taxpayer; Chairman, Board of Selectmen, Town of Walpole, PO Box 729, Walpole, NH 03608; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: July 2, 2010

Anne M. Stelmach, Clerk