

Lowell and Karlene Schwartz

v.

Town of Center Harbor

Docket No.: 23409-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 abated assessment of \$1,399,400 (land \$1,343,100; building \$56,300) on Map 7/Lot 24, a cottage on 0.99 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the abutting property (“Lot 25”), which is very similar to the Property, sold for \$1,250,000 in November, 2007 which indicates the Property is assessed approximately 12% higher than its market value;

(2) a Spring 2008 letter prepared by the New Hampshire Colonials Family (“N. H. Colonials”) indicated, based on a “statistical analysis” of the market sales during 2006 and 2007, market values on Squam Lake were increasing; and

(4) the assessment should be reduced to approximately \$1,267,000.

The Town argued the abated assessment was proper because:

(1) the abated assessment is only slightly more than 10% higher than the abatement sought by the Taxpayers;

(2) Lot 25’s initial listing at \$1,350,000 in September, 2005 expired in October, 2006, but after being listed again in May, 2007 sold quickly indicating the sale price of \$1,250,000 was likely under market value;

(3) the N. H. Colonials data presented by the Taxpayers is not indicative of market value appreciation in 2007 because the average sale price calculation is based on a small sample of Squam Lake sales heavily influenced by “outlier” sales which skew the average sale price; and

(4) the abated assessment recognizes the limitations of a seasonal septic system, inadequate well and increased depreciation for its “seasonal nature and outdated interior.”

Neither party submitted any evidence contrary to the department of revenue administration’s (“DRA”) determination that the 2007 level of assessment was 99.9%.

Board’s Rulings

Based on the evidence submitted, the board finds the Taxpayers failed to carry their burden to prove the abated assessment was disproportionate.

The Taxpayers’ case hinges upon the applicability of the November, 2007 sale of the adjoining Lot 25 for \$1,250,000. While the parties presented arguments relative to their opinion of market change between April 1, 2007 and the sale date, November 1, 2007, the board need not make any finding on that issue because we find the sale price was likely below market value. Upon questioning, the Taxpayers

described their understanding of the motivation for the owners of Lot 25 to sell the property (financial need due to health and familial commitments)¹ and the fact the other abutter to Lot 25 (“Lot 26”) purchased the property shortly after it was re-listed in May, 2007 to insure the rustic aspect of the neighborhood was preserved. The Taxpayers mentioned both their concern and concern of the owners of Lot 26 was based on the prolonged construction of a new, large dwelling (still yet unfinished) on lot 22. Thus, the acquisition of Lot 25 by an abutter (who were friends with the grantor) in order to protect the privacy and quality of the neighborhood along with the grantor’s ability to continue to enjoy the property by leasing it from the grantee are factors that make the sale a non-arm’s-length transaction. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 255 (1994) (tribunal has authority to evaluate the evidence and determine if the sale was an arm’s-length transaction). Further, while the Taxpayers were uncertain whether Lot 25 contained a deeded restriction precluding the installation of a dug-out boathouse in the future, if indeed such restriction was placed in the deed, it would also be a factor diminishing the reliability of the sale as being an arm’s-length transaction.

The Town’s review of the Property and its reasons for the abated assessment appear to be based upon factors the market would consider including the inadequate well (as described in interesting detail by Mr. Schwartz) and seasonal nature of the cottage and septic. See Paras v. City of Portsmouth, 115 N.H. 63 (1975) (municipalities have the responsibility to consider all factors that may impact a property’s value).

Both based on the evidence presented in this case and the board’s institutional knowledge of the Squam Lake market on other appeals recently brought before the board, we recognize the difficulty in definitively estimating market value given the small sample of Squam Lake sales and the varied types of

¹ Further evidence of the undue motivation to sell was the fact the grantors of Lot 25 continued to occupy the property seasonally by leasing it from the grantees of Lot 25.

properties and motivations of the parties involved in the transactions. On balance, however, the board finds the Taxpayers' argument does not warrant a further abatement than that granted by the Town.

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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Lowell and Karlene Schwartz, 593 Center Harbor Neck Road, Center Harbor, NH 03226, Taxpayers; Chairman, Board of Selectmen, Town of Center Harbor, PO Box 140, Center Harbor, NH 03226; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: June 3, 2009

Anne M. Stelmach, Clerk