Adrian A. Basora and Pauline M. Barnes

v.

Town of Walpole

Docket No.: 23421-07PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 2007 abated assessment of $851,800 (land $89,200; building $762,600) on Map 22/Lot 9, a single family home on 2.360 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 abated assessment was excessive because:

(1) the increase in the 2007 assessment was highly disproportionate to similar properties in the Town;

(2) there are substantial inconsistencies in the assessment calculation basis;

(3) an analysis prepared by Everett Real Estate Services, Inc. (the "Everett Analysis") indicated the home's quality code was excessive as depicted in the average comparative assessment data of six similar historic Walpole homes; and

(4) a market value of $700,000 to $740,000 would be appropriate.

The Town argued the abated assessment was proper because:

(1) both quality and depreciation must be considered when assessing older homes;

(2) the Everett Analysis is not reliable as it does not provide an opinion of value;

(3) the homes analyzed by the Taxpayers indicate the Town's quality rating was low and the properties were clearly underassessed;

(4) to reduce the Property to the level indicated by the Taxpayers would further create disproportionality in the Town; and

(5) three comparable properties analyzed support a market value range of $810,000 to $1,006,000 which indicates the assessment of the Property is reasonable.

The parties did not dispute the median level of assessment of 100.1% as determined by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the abated assessment of $851,800 was disproportionate.

The Taxpayers first ground of appeal was their house was graded higher than other similar houses in Town. The Taxpayers submitted an "analysis of readily available public data…" performed by Everett Real Estate Services, Inc. that compared the house grading assigned by the Town on the assessment-record card of similar "high-end antique" properties in Walpole. The Everett Analysis asserted, as the Taxpayers did at hearing, the Property was

overassessed because it was graded "A8" while other similar houses were graded "A6" and "A7". In a case with a similar set of facts, Porter v. Sanbornton, 150 N.H. 363 (2003), the supreme court held that inconsistent or flawed methodology alone does not prove disproportionality.

> To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217, 489 A.2d 153 (1985). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method…. While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result. Id. at 368-369.

The Taxpayers second ground for appeal was that the Property's assessed value increased by a greater percentage than other similar properties as a result of the 2007 update. The board finds such evidence does not conclusively prove the Property is disproportionally assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. The Town's update complies with RSA 75:8 and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

Both grounds for appeal presented by the Taxpayers focused on comparing assessments as opposed to looking at market data to determine whether the Taxpayers' assessment was proportionate. Evidence of sales of similar properties was submitted as

part of Taxpayers' Exhibit No. 1 and Municipality Exhibit A. The assessment-record cards contained in those exhibits indicate four properties of similar, although not identical, quality houses had sold in the Walpole Village area from 2005 through 2007. The following grid details and compares the major features of each property including the Property.

WALPOLE SALES					
	Subject	Sale #1	Sale #2	Sale #3	Sale #4
Name	Grancoise/ Basora & Barnes Map 22 Lot 9	Hubbard Trust/ Winmill Map10 Lot 7	Weber/Lake Family Trust Map 19 Lot 72	Cashel/ Pulverman Map 20 Lot 79	Lahaise/Dunbar Map 17 Lot 16
Price	$995,000	$900,000	$835,000	$865,000	$780,000
Date of Sale	09/30/2004	10/28/2007	2/18/2005	7/16/2007	10/31/2006
PHYSICAL FEATURES					
Size/Gross Living Area (GLA)	5,680	3,813	5,232	3,481	5,619
Bedrooms/ Bathrooms	5/4.5	4/3.5	4/4.0	4/4.0	4/3.5
Lot Size (Acres)	2.360	2.760	5.860	0.627	5.0
Quality/ Condition	A8/Very Good	A7/Excellent	A6/Very Good	A9/Excellent	A5/Excellent
Outbuildings /Pools	Barn, Shed	Garage, Shed, Pool	Garage/Pool	Barn	Shed/Pool
Other			Dysfunctional kitchen; Excess frontage		

Even without time adjusting the sales that predated April 1, 2007 (see Municipality Exhibit A where the Town indicates the market was appreciating up to April 1, 2007 at approximately 1% per month), the sales generally indicate the Town's abated assessment of $851,800 is not excessive. The Property has the largest gross living area of any of the comparables and, based on the photographs submitted of the interior of the Property and

some of the comparables, the Property has a highly desirable antique/renovated finish including excellent kitchen, paneling/wainscoting, crown molding, ornate staircase, etc. While the board agrees the Taxpayers' purchase of the Property in September 2004 for $995,000 may have been in excess of market value for the reasons argued by the Taxpayers, the board notes the Town's abated assessment is approximately 15% lower than their purchase price.

Further, to the extent any of the sold properties are assessed lower than the Taxpayers' Property and if such differences are not due to different features (gross living area, outbuildings, bathrooms, etc.), it is possible the comparables may be underassessed. 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 Taxpayers' assessment because of 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.

Last, the Taxpayers argued the Town should not have applied a $3,000 factor to the land for its "pastoral" view. However, the Taxpayers did not show how this nominal value (less than .4% of the total assessed value) resulted in 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); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899). (The equity that results from a proportionate

assessment is not "fixed by an invariable rule" nor the result of "a ruinous contention about trifle" but should be reasonably exact to meet the practical purposes envisioned by the legislature.)

In conclusion, the board finds no market evidence was submitted that would support the Taxpayers' assertion that the proper assessment should be in the $700,000 to $740,000 range. All the market evidence submitted indicates the Town's assessment is reasonable and proportionate.

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, <u>not the date this decision is received</u>. 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 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: Adrian A. Basora and Pauline M. Barnes, PO Box 1055, Walpole, NH 03608, Taxpayers; 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: April 1, 2010

_____
Anne M. Stelmach, Clerk

Adrian A. Basora and Pauline M. Barnes

v.

Town of Walpole

Docket No.: 23421-07PT

ORDER

The board has reviewed the "Taxpayers'" April 22, 2010 "Motion for Rehearing" (the "Motion"). In accordance with RSA 541:5 and Tax 201.37(d), the board issues this suspension Order until it rules on the Motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

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Dated: May 4, 2010

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Anne M. Stelmach, Clerk

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v.

Town of Walpole

Docket No.: 23421-07PT

ORDER

The board received and has reviewed the "Taxpayers'" April 22, 2010 "Motion for Rehearing" (the "Motion"). No objection was received from the "Town." The board's May 4, 2010 Suspension Order is hereby removed.

The board denies the Motion. Tax 201.37(e) states in part: "Rehearing motions shall only be granted for 'good reason,' pursuant to RSA 541:3, and a showing shall be required that the board overlooked or misapprehended the facts or the law and such error affected the board's decision." Further, Tax 201.37(g) prohibits parties from presenting new evidence with rehearing motions unless it can be shown that the "evidence was newly discovered and could not have been discovered with due diligence in time for the hearing…."

The Motion does not comply with the provisions of the above cited rules. The Motion contains many arguments that were presented by the Taxpayers during the hearing and which the April 1, 2010 "Decision" addressed. Also, notably the rehearing contains new evidence in the form of an appraisal prepared by Everett Real Estate Services, Inc. dated April 12, 2010, 11 days

after the Decision was issued. This evidence clearly does not comply with Tax 201.37(g) in that it could have been presented at the hearing if the appraisal had been requested by the Taxpayers earlier.

In brief, the board finds the Motion does not present any admissible evidence to show that the board's Decision misapprehended the facts or the law and arrived at an improper conclusion. See RSA 541:3.

Any appeal of this Order must be to the supreme court in accordance with RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

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Dated: May 13, 2010

Anne M. Stelmach, Clerk