

Randy and Andrea Comsteller

v.

Town of Wentworth

Docket No.: 23440-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 total assessment of \$312,400 on the “Property,” which consists of two lots: \$298,900 (land \$96,300; building \$202,600) on Map 05/Lot 03-03 (“Lot 3”), a single family home on 21.82 acres; and \$13,500 (land only) on Map 05/Lot 1-23 (“Lot 1”), a vacant 2.48 acre lot. For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayers carried this burden.

The Taxpayers argued the total assessment was excessive because:

(1) across from Lot 3 is a gravel operation with a lot of noisy truck traffic that, at times, shakes the house;

(2) a qualified appraiser, Louis C. Manias, estimated the market value of both lots to be \$275,000 as of April 1, 2006 (see “Manias Appraisal,” Taxpayer Exhibit No. 2);

(3) the purpose of the Manias Appraisal was tax abatement, not financing (there is no mortgage on the Property);

(4) some properties in the Town received abatements even though they sold for higher prices than their abated assessments, but the Property had its assessment increased to an exorbitant amount;

(5) if the Property is sold, the sewer and water systems are adequate only for a two bedroom house, the house is old (built in 1795-96), has only two heating ducts on the second floor, a kitchen that is not updated and is not “functional” and about \$75,000 of renovations will be needed to make the house “family friendly”;

(6) Lot 1 is “just a hole” (with a 10-15 foot drop from the road to a brook) located in a flood plain, is unbuildable and has only nominal value (the \$3,000 estimated in the Manias Appraisal); and

(7) the assessment on the Property should be substantially abated.

The Town argued the total assessment was generally proper, except for the minor adjustment noted below, because:

(1) the Town did an update of property assessments in tax year 2006;

(2) in 2004, when the Property was purchased for \$268,000, the purchasers were aware of the future gravel operations that would take place across the road and the Town was advised the gravel operation has been in operation only for a total of about 30 days in the last five years because the owner extracts the gravel only for “personal use” and not for sale to the public;

- (3) two of the comparable sales in the Manias Appraisal are from outside the Town, lessening their reliability, especially since sales in the Town were available and could have been used, and one of the comparables relied upon by the Taxpayer (Map 8, Lot 7/10) was an unqualified sale;
- (4) the comparable sales presented by the Town support the proportionality of the assessments;
- (5) as discussed at the hearing, the Town has submitted to the board a revised assessment-record card ("Revised ARC") showing the assessment on Lot 3 should be \$291,200, based on the department of revenue administration ("DRA") monitor's October 31, 2008 inspection and comments (contained in Municipality Exhibit A); and
- (6) Lot 1 should be assessed as back land.

The board kept the record open for the Town to submit a revised proposed assessment for Lot 3 based on the observations of the DRA monitor. The Revised ARC submitted after the hearing by the Town shows a proposed reduction in the assessment on Lot 3 by \$7,700 (from \$298,900 to \$291,200). Among other things, this card lowered the assessment on the fireplaces because of "depreciation" and decreased the effective area by 87 feet to take into account the basement "crawl space." As noted above, the Town suggested at the hearing that Lot 1 could be assessed as back land.

The parties stipulated the level of assessment was 94.6 % in tax year 2007, the median ratio computed by the DRA.

Board's Rulings

Based on the evidence, the board finds the assessments should be abated as follows:
Lot 3: \$274,400 (land \$96,300; building \$178,100); and Lot 1: \$3,200. The appeal is therefore granted.

In arriving at these abated assessments, the board considered and weighed the following four general areas of evidence: (1) the testimony of the Taxpayers describing the physical

features of both lots including the adjacent property with a gravel operation; (2) the Manias Appraisal; (3) the Town's testimony and sales documentation; and (4) the physical listing corrections as noted by the DRA and the Town's Revised ARC.¹

The Revised ARC changes the designation of the heating system from "hot air" to "hot water", but the board is unable to identify how the mathematical calculations were derived. We note the "A2" quality factor on the Revised ARC actually increased rather than decreased despite the correction changing the heating system to "hot air", a less costly, less desirable and, thus, generally lower valued heating system than "hot water." The Town also agreed that there were substantial areas of the house that were unheated, but, again, there was no discernable adjustment to the house assessment to account for the unheated areas. The board also finds the kitchen cabinet space is very minimal and of lower quality (as reflected in two photographs in Taxpayer Exhibit No. 1) than what is customary for an above average grade house (grade "A2").

Consequently, to account for the inferior heating system, the unheated space in both the main portion of the house on the second floor (partially) and all of the ell portions and the minimal kitchen counter cabinet space, the board has applied a 5% functional depreciation to the Town's Revised ARC. The total depreciation increases to -51% (or 49% good), and results in a replacement cost less depreciation of \$160,100 for the dwelling. This same depreciation has been applied to the fireplace calculation in the "extra features" section of the Revised ARC valuation which reduces the total "extra features" value to \$18,000.

¹ As a specialized tribunal, the board has de novo appellate authority to review all the evidence submitted. To determine whether an abatement is warranted, the board considers and weighs the market value evidence presented, utilizing its "experience, technical competence and specialized knowledge." See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it.") Further, in making its findings where there is conflicting evidence, the board must determine for itself the credibility of the witnesses and the weight to be given the testimony of each because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board also reviewed the original and the Revised ARC as to whether the adjacent gravel operation was accounted for by the Town. Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975) (municipalities must consider all relevant factors in assessing property proportionally). The board notes a 5% “condition” factor reduction has been applied to the house lot and a 10% economic adjustment for “LOC/RDS” has been applied to the main dwelling valuation. After these adjustments, the board finds any market diminution in value that may result from the periodic operation of the gravel facility is already reasonably accounted for.

Lot 1, the vacant parcel across Beach Hill Road, was assessed as a separate estate by the Town. The Town conceded at hearing, however, that its highest and best use was not as a stand alone lot but rather as part of the Taxpayers’ overall estate and, thus, should more appropriately be valued as supplemental land or rear land. This comports with the Taxpayers’ testimony that both lots had been purchased as one estate when they acquired the Property in 2004 and also with the Manias Appraisal conclusion that the additional lot is of nominal value (\$3,000) and is part of the Taxpayers’ entire estate. Based on this consistent evidence, the board has modified the assessment-record card for Lot 1 to treat the entire 2.48 acres as rear land with a base rate of \$1,500 adjusted by a combined size factor of 0.96 and a 0.90 factor for the wet and unbuildable condition of the land as testified to at hearing and noted on the assessment-record card for Lot 1. These factors result in an assessed value of \$3,200, very similar to the Manias Appraisal contributory value estimate of \$3,000.

The combined abated assessment of Lots 1 and 3 is \$277,600 and indicates a market value of \$293,450 when equalized by the 94.6% stipulated ratio. While this indicated market value is slightly higher than the Manias Appraisal estimate, the board finds it is a reasonable estimate of the Property’s market value given the Taxpayers’ purchase of the Property in 2004 for \$268,000 and the likely market appreciation that occurred during the interim. While the

board does not dismiss the Manias Appraisal, we are unable to give it conclusive weight due to:

(1) Mr. Manias not attending the hearing to present and answer questions relative to the appraisal; and (2) as the Town noted, two of his four comparables were outside the Town of Wentworth and may warrant an adjustment for location which he did not make.

In brief, the board's revised assessments of \$274,400 for Lot 3 and \$3,200 for Lot 1 reasonably account and correct for the factors of the Property that impact on its market value and consider Lot 1 as being part of the Taxpayers' entire estate as opposed to a separate parcel.

If the taxes have been paid, the amount paid on the value in excess of \$277,600 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 properties pursuant to RSA 75:8, the Town shall use the ordered assessments 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 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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Randy and Andrea Comsteller, Box 33 Wentworth, NH 03282, Taxpayers; Chairman, Board of Selectmen, Town of Wentworth, PO Box 2, Wentworth, NH 03282; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: August 11, 2009

Melanie J. Ekstrom, Deputy Clerk