

Thad and Janice Russell

v.

Town of Nottingham

Docket No.: 23566-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$372,200 (land \$292,200; building \$80,000) on Map 68/Lot 98, a camp on 0.24 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 Town’s correction of the water frontage from 100 feet to 70 feet did not reduce the assessment; and

(2) an appraisal by John F. Markle (“Markle Appraisal”) estimated the Property’s market value to be \$344,100 as of April 1, 2007 and thus the assessment should be reduced to \$336,900.

The Town argued the assessment was proper because:

- (1) the Markle Appraisal value conclusion is unreliable because of the magnitude of the adjustments and the lack of reliability of the front foot adjustment in particular;
- (2) the assessment models utilized during the 2007 reassessment did not adjust for waterfront lots having frontages that ranged from 50 to 300 feet and thus the water front correction did not have any impact on the assessment; and
- (3) four sales of similar improved waterfront properties support the Taxpayers’ assessed value.

The parties stipulated to the median level of assessment as determined by the department of revenue administration of 98.3% for tax year 2007.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was overassessed.

The board agrees with the Town’s critique of the Markle Appraisal. The paired sales analysis to quantify adjustments for water frontage and for view were extracted from the same two sales without a proper isolation of one of the two variables, view and water frontage, being accounted for. As the Town noted, this results in the conclusions being flawed and when applied to the Markle comparables, particularly comparables 3 and 4, results in absurdly inaccurate value indications. While the Markle Appraisal excludes the indicated value conclusions of comparables 3 and 4, the inaccuracies of these two adjustments alone also lead the board to place little weight on the value conclusions of comparables 1 and 2. Consequently, the board is unable to place any weight on the Markle value conclusion.

The board finds the four sales submitted as part of Municipality Exhibit A generally support the assessment placed on the Taxpayers' Property. The four sales range in size from 0.07 to 0.40 acres and from 50 to 170 feet of water frontage. The Taxpayers' Property of 0.24 acres and 70 feet of water frontage is reasonably bracketed by these sales. The board appreciates the Taxpayers' concern that the Town's assessment models do not adjust for differing amounts of water frontage between 50 and 300 feet. However, the Town's four sales generally indicate, as the Town asserted, that when properties with small lots such as the four comparables and the subject are transferred, the market tends to view the property on a "site value" basis or unit of comparison rather than on a front foot basis. Said another way, while frontage does impact value when there is either surplus frontage or inadequate frontage, small lots with adequate frontage for the customary enjoyment of the waterfront for recreational uses sell for little difference in value based on the amount of frontage.

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.

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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: Thad and Janice Russell, 21 Crabapple Lane, Chelmsford, MA 01824, Taxpayers; Chairman, Board of Selectmen, Town of Nottingham, PO Box 114, Nottingham, NH 03290; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: January 5, 2010

Anne M. Stelmach, Clerk