

Markus and Jerrie Teras

v.

Town of Fitzwilliam

Docket No.: 23622-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$34,700 (land \$17,500; building \$17,200) on Map 42/Lot 1-6, 75 Club Drive, a manufactured home (travel trailer) on a 0.118 acre lot (the “Property”). (The Taxpayers also own, but did not appeal, a 0.123 acre lot, Map 42/Lot 1-15; the assessment on that lot is not at issue in this appeal.) For the reasons stated below, the appeal for abatement on the Property 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) they purchased the Property in June, 2007, just several months after the assessment date, for \$17,000, from a seller who was asking \$19,900 (as shown in Taxpayer Exhibit No. 2);
- (2) the Whitney Appraisal (Taxpayer Exhibit No. 1) they obtained in connection with the tax abatement process at the Town level estimates the market value of the Property as of February 12, 2008 at \$20,000;
- (3) the Town is assessing the Property at about twice the price at which it sold, but assesses other properties in the same association (Woodbrook) at close to their selling prices; and
- (4) the assessment should be abated substantially to reflect a market value of no more than \$20,000.

The Town argued the assessment was proper because:

- (1) the Town's assessors updated values in 2007 (based upon the physical data collected by a prior appraisal company (Vision) as part of a 2005 revaluation);
- (2) a consistent methodology was applied to all properties assessed in the Woodbrook development by taking into account the amenity or "features" value associated with these units, using a base rate of \$15,000 per unit if improved and \$9,000 per unit if vacant;
- (3) the Whitney Appraisal presented by the Taxpayers is not a valid indicator of market value because, among other things, this appraisal contains errors when it describes the Property as "vacant" and makes arbitrary adjustments for the value of the improvements on the comparables it uses;
- (4) the assessment-record cards for nine comparable properties (submitted as Municipality Exhibit A) support the Town's methodology and show that the assessments are proportional and the assessment is also supported by the available sales data; and

(5) the Taxpayers failed to meet their burden of proof.

The parties agreed the level of assessment in the Town was 98.8%, the median ratio computed by the department of revenue administration for tax year 2007. After the hearing, the board informed the parties that one of its review appraisers would perform an independent investigation and analysis and submit a report and each party would be provided a copy of the report and an opportunity to file comments regarding it. Ms. Cynthia L. Brown, CNHA, completed and filed her report (the "Report") on September 16, 2010 and the board has received written comments on the Report from both parties.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving the assessment was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In order to prevail in a tax abatement appeal, the Taxpayers had the burden of proving the market value of the Property was less than approximately \$35,000, the assessment under appeal (\$34,700) adjusted by the level of assessment in the Town for tax year 2007 (98.8%).

The Property is situated in a 'seasonal condominium campground' known as Woodbrook. The lots in Woodbrook share a common beach, community building, swimming pool, tennis and basketball courts and other amenities, as well as community well water and a septic system. (Report, p. 5.) Some lots (but not the Property) have private docks associated with them.¹ The Town precludes year-round occupancy in Woodbrook. Each lot is individually owned and

¹ See Report, p. 9. There is some uncertainty in the Town regarding which Woodbrook lots have private docks associated with them, but it is not disputed the Property does not have this amenity.

separately assessed by the Town and each owner also pays annual association dues to Woodbrook.

To determine whether a tax abatement is warranted, the board considers and weighs all of the 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, “judgment is the touchstone” for deciding a tax appeal. See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of 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 heart of this appeal is the Taxpayers’ claim the assessment on the Property is disproportional and should be abated because the assessment is more than twice the price they paid for the Property in June, 2007, just a few months after the assessment date. They argued the assessment should be based on a market value of no more than \$20,000, based on the purchase price (\$17,500) and the Whitney Appraisal they obtained, which estimated a \$20,000 value. The board considered these arguments carefully, but finds the Taxpayers did not meet their burden of proof both because of the conflicting evidence presented by the Town and the additional facts contained in the Report.

The Town performed an assessment update in 2007 using a mass appraisal methodology. The Town’s assessing contractor (Gary Roberge of Avitar Associates of New England, Inc.)

testified the Town followed the same methodology in assessing all of the lots in Woodbrook.

The board finds consistent assessment practice is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Municipality Exhibit A contains the assessment-record cards for other lots in Woodbrook and shows a range of selling prices for improved lots ranging from \$35,000 to a high of \$89,000, with assessments ranging from \$40,200 to \$78,400, depending upon location, the extent of improvements and so forth.² In this light, and absent persuasive evidence to the contrary, the \$34,700 assessment on the Property would not appear to be disproportional.

The board also carefully reviewed the Report prepared by its review appraiser. The use of the board's review appraisers to aid the board in making market value determinations is authorized by statute. (RSA 71-B:14; cited in Appeal of Sokolow, 137 N.H. 642, 643-44 (1993)). The review appraiser attended the hearing and prepared an independent appraisal estimating the retrospective market value of the Property as of the assessment date, April 1, 2007. She inspected the Property and took all of the other steps necessary to complete her work in a professional and thorough manner, focusing on five comparable sales within the same development (Woodbrook) to develop her conclusions. After weighing all of the evidence, the board finds the Report is the most reliable evidence of the market value of the Property as of the assessment date.

The board could place no weight on the Whitney Appraisal submitted by the Taxpayers. The Whitney Appraisal was prepared "as of" an effective date of February, 2008, about eleven

² There is one lot in Municipality Exhibit A which sold for \$32,000 in August, 2006, eight months before the assessment date. Assessed at \$27,300, this lot (2 Forest Drive) is unimproved. The Town's methodology distinguished unimproved ("vacant") lots from improved lots in Woodbrook, assigning a base value for improved lots that is \$6,000 higher (i.e., \$15,000 rather than \$9,000 in the "extra features" section of the assessment-record card).

months after the assessment date. (Mr. Whitney used three sales occurring in June, August and November, 2007 and made no time adjustments.)

The Taxpayers did not ask Mr. Whitney to attend the hearing and therefore he was unable to answer questions from the Town and the board regarding various errors in his appraisal. One significant error pertains to the actual sale price of comparable sale #1, which sold for a price that was double what Mr. Whitney thought it was (\$35,000 rather than \$17,500).³

Further, it is questionable how much reliance can be placed on comparable sale #2 in the Whitney Appraisal (2 Club Drive), which was an estate sale. While the Taxpayers argue otherwise (in their written comments to the Report), the board notes it is common practice for estate sales to be disregarded by the department of revenue administration, as well as by assessors and appraisers, because such sales typically do not meet the standards of reliability established by professionals. In the Report (p. 12), the board's review appraiser further notes this particular lot was advertised and priced for a quick sale; nevertheless, the Whitney Appraisal treated it as a valid sale with no discernible adjustments or disclosure of these pertinent facts, which should, at the very least, have been investigated further because of other unusual aspects of the sale.⁴

The board has, of course, considered the purchase price paid for the Property by the Taxpayers in June, 2007 (\$17,000), but cannot give it material weight or conclude it is a reliable indicator of market value for at least two reasons. First, the Property was never listed through a multiple-listing service and instead was simply advertised for sale by the prior owner with an

³ This error apparently occurred because Mr. Whitney failed to consider the fact the seller was the Town and therefore "was exempt from paying [a] real estate transfer tax." (See Report, p. 12.)

⁴ See Report (p. 12) where other problems with using this sale as a valid comparable are discussed; and, e.g., Webb v. Town of Brentwood, BTLA Docket No.: 24030 (August 9, 2010) ("The Town testified the DRA does not consider 'estate' sales to be qualified, arm's length transactions and does not include them in its equalization studies.").

Internet posting (on “Craig’s List”) and on the Woodbrook community website. There might well have been other potential buyers who did not have access to this limited information regarding the Property’s availability for sale and this lack of exposure could have led to a sale price that was not reflective of market value. In brief, and in the absence of sufficient probative evidence to the contrary, this sale may not have been an arm’s-length transaction. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). As noted in these and other cases, the board has the discretion to evaluate and determine the credibility of the sales price being indicative of market value. Second, the Report carefully analyzed other sales of properties in the Woodbrook development which supported a higher value for the Property.

The board has reviewed the remainder of the Taxpayers’ comments pertaining to the Report and finds them to be without merit and, to a large degree, irrelevant to the central issue of proportionality in this appeal. The mere fact the Taxpayers disagree with the Report’s value conclusion is not cause for rejecting it or casting undeserved aspersions on the person who prepared it.

For all of these reasons, the board finds the best estimate of the market value of the Property as of the assessment date is in the range of \$33,000, which is quite close to the equalized value of the assessment. Considering the wide spread of absolute sale prices in Woodbrook, the range of net adjustments needed to compare them and the small difference between the assessed value and the review appraiser’s estimate of value, the board finds the Taxpayers failed to prove an abatement is warranted for tax year 2007. As the supreme court has noted, the “right to [a] tax abatement” is “dictated by statute” and the statute “confers broad discretion and equitable powers” to the tribunal “to abate taxes,” but this power is “not

unlimited” and: “we will abate only as much of a taxpayer’s taxes as justice requires. [Citation omitted.] Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining that share. [Citation omitted.]” Porter v. Town of Sanbornton, 152 N.H. at 368. Consequently, the appeal is denied.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively “rehearing motion”) 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

Markus and Jerrie Teras v. Town of Fitzwilliam

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I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Markus and Jerrie Teras, 982 Alstead Center Road, Alstead, NH 03602, Taxpayers; Chairman, Board of Selectmen, Town of Fitzwilliam, PO Box 725, Fitzwilliam, NH 03447; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: November 4, 2010

Anne M. Stelmach, Clerk

Markus and Jerrie Teras

v.

Town of Fitzwilliam

Docket No.: 23622-07PT

ORDER

The board has reviewed the “Taxpayers” “Motion for Reconsideration,” as resubmitted on December 13, 2010 (the “Motion”), of the November 4, 2010 Decision denying the appeal. The suspension Order issued on December 20, 2010 is hereby dissolved and the Motion is denied.

The Taxpayers attempt to present further factual arguments regarding two comparables used in the appraisal they submitted (the “Whitney Appraisal”) to support a lower assessment and the motives of the seller of the “Property.” The Decision, however, placed no weight on the Whitney Appraisal for a number of reasons and concluded the price agreed upon by the seller and the Taxpayers was not indicative of market value. The board further found the “Town’s” evidence in support of the proportionality of the assessment and the “Report” prepared by the board’s review appraiser estimating market value as of the assessment date (based upon four other sales, in addition to 93 Brookside Drive, also used in the Whitney Appraisal) was probative in concluding no abatement was warranted for tax year 2007. Simply because the Taxpayers

disagree with the findings and reasoning set forth in the Decision is not a valid basis for granting the Motion. See RSA 541:3 and Tax 201.37.

Any appeal of the Decision must be by petition to the supreme court filed within thirty (30) days of the Clerk's date shown below, see RSA 541:6, with a copy provided to the board in accordance with Supreme Court Rule 10(8).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Markus and Jerrie Teras, 982 Alstead Center Road, Alstead, NH 03602, Taxpayers; Chairman, Board of Selectmen, Town of Fitzwilliam, PO Box 725, Fitzwilliam, NH 03447; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: January 21, 2011

Anne M. Stelmach, Clerk