

James C. and Susan L. Randall

v.

Town of Windham

Docket No.: 23694-07PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2007 assessment of \$691,200 (land \$379,000; building \$312,200) on Map 17/L/Lot 54, a single family home on 0.29 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 land portion of the assessment is disproportionate to other similarly situated properties nearby;

- (2) the Property's land assessment should be \$261,000 based on the average of the land assessments of four nearby properties; and
- (3) adding the proposed revised land value of \$261,000 to the Town's current building assessment results in a more equitable assessment for the Property.

The Town argued the assessment was proper and the appeal should be denied because:

- (1) the current assessment was determined during the Town's 2006 revaluation using a mass appraisal methodology that was consistently applied to all waterfront properties located on Corbetts Pond;
- (2) the Taxpayers received a variance in 2000 to construct a year-round, three bedroom home on the lot and sales of seasonal and year-round dwellings on Corbetts Pond indicate year-round properties sell for a premium above seasonal properties;
- (3) the Taxpayers have not provided any evidence of the Property's market value and, therefore, have not met their burden of proof;
- (4) an "Analysis" (Municipality Exhibit C) prepared by Mr. Rex Norman, the Town's assessor, estimated the Property's market value was \$700,000 on April 1, 2007; and
- (5) the Analysis supports the Property's equalized assessed value of \$699,595 ($\$691,200 \div 0.988 = \$699,595$).

Neither party presented any evidence to dispute the department of revenue administration's (the "DRA") 2007 median ratio for the Town of 98.8% was not indicative of the Town's 2007 level of assessment.

Board's Rulings

The foundation for taxation in New Hampshire is found in Part I, Article 12 and Part II, Article 5 of the New Hampshire Constitution that require every member of society contribute her

or his share in support of government and that taxes levied to do so must be “proportional and reasonable.” Further, RSA 75:1 establishes the basis for achieving proportional assessment is market value. Consequently, for taxpayers to carry their burden, they must present market value evidence to support their claim of disproportionate assessment. The board finds the Taxpayers failed to present any evidence of the Property’s market value and thus failed to prove the Property was disproportionately assessed and the appeal is denied.

The process of arriving at “proportional and reasonable” assessments involves three steps: 1) proper determination of taxable real estate rights; 2) market-based valuation of those real estate rights (appraising); and 3) relating those appraised values to the municipality’s level of assessment (assessing). Errors in any one of these steps can result in an assessment not being “proportional and reasonable.”

In this case, the first step in the assessing process of identifying the property rights is not in dispute. The Property consists of a year-round residential dwelling with an attached garage containing 2,928 square feet of living area, an artesian well and on-site septic system and approximately 50 feet of waterfrontage on Corbetts Pond.

Relative to the second step of estimating market value, the Taxpayers did not provide any market supported evidence, such as sales data of comparable properties or an appraisal, of the Property’s market value as a whole on which to base the assessment. Rather, they contend the Property’s assessment should be abated by revising the land portion of the assessment based on the average of the land assessments of four neighboring seasonal properties. The Taxpayers further testified they did not dispute the assessed value placed on any of their improvements. This board’s jurisdiction is entirely statutory. The Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) requires the board to consider the Taxpayers’ “entire estate” when determining

whether an abatement is warranted on any portion of the estate. Further, in the Appeal of Walsh, 156 N.H. 347, 356 (2007), the court found:

[E]ven if the board could have addressed the land assessments separately, it would still have needed to examine those assessments in conjunction with the buildings' assessments to determine whether the taxpayers were being disproportionately taxed. While the taxpayers attempt to split the assessments into land and buildings, the board correctly found that "[a]ny property tax assessment appeal based on disproportionality requires a review of the market value of the property in its entirety (*i.e.*, land and buildings) and the Town's level of assessment.

As noted earlier, the Taxpayers' sole argument was relative to the land value portion of the assessment. Therefore, even if the board were to find (which it does not for the reasons stated later in this decision) the land portion of the assessment was excessive, the Taxpayers still have the burden to show the aggregate value of the entire estate was disproportionately assessed. In the residential real estate market, properties are transferred in their entirety as a single economic unit. When a residential property is for sale, there is one offering price for the property as a whole rather than separate asking prices for the individual components such as for the land and buildings.

In support of their position, the Taxpayers stated it had been the Town's standard practice for many years to assess the land portion of all the lots in the Property's neighborhood around Corbetts Pond similarly with only small variations in assessed value based solely on the size of the lot and that methodology should be continued. They further testified the previous land assessments for these properties were determined regardless of whether they were improved with seasonal or year round dwellings. To estimate what they considered to be the correct value to assign to the land portion of the Property's assessment, the Taxpayers "averaged" the land assessments of four similar sized properties located on Corbetts Pond in the Property's immediate neighborhood. The four properties are listed in the Taxpayers' appeal document and

identified on the Town's tax maps as parcels 17/L/53, 17/L/55, 17/L/56 and 21/K/47A and have land assessments of \$286,000, \$282,000, \$186,000 and \$290,000 respectively. The Taxpayers' lot contains 0.29 acres and the four parcels the Taxpayers used in comparison ranged in size from 0.23 acres to 0.37 acres. The Taxpayers assert the \$261,000 "average" of the land assessments for the other four parcels would be an appropriate assessment for the land portion of the Property. For several reasons, the board finds the Taxpayers' methodology flawed.

First, averaging values or assessments does not reflect the unique characteristics of each property and the differences the market would recognize between different properties. For example, the four properties used in the Taxpayers' comparison were considered "seasonal" by the Town when it performed a full revaluation of all properties in 2006. The Town testified, based on sales data, seasonal properties sell for less than year-round properties and to recognize that fact, it adjusted the land base rate of all seasonal waterfront properties on Corbetts Pond by minus 25%. In support of its testimony, the Town submitted Municipality Exhibit A which lists the land assessments for the lots in the Property's neighborhood. Additionally, the Town submitted Municipality Exhibit B which contains the assessment-record cards for the four parcels the Taxpayers used in their comparison. A review of these two exhibits indicates the Town applied a consistent, market derived methodology when it assessed the waterfront properties in the Property's neighborhood during the 2006 revaluation.

Second, "all relevant factors to property value should be considered when making an appraisal in order to arrive at a just result." Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). By comparing the Property to four seasonal properties, the Taxpayers have not accounted for all the factors affecting the Property's market value. When the Taxpayers applied for and received permits and variances to raze their old structure and to improve the Property

with a year-round dwelling, they created some intangible property rights that seasonal properties do not have. These rights add value and would be an integral part of any marketing of the Property. The board finds the Town recognized the difference in value of these rights between seasonal and year-round properties when it made the 25% adjustment to the land base rate. Further, one of the four lots (17/L/56) the Taxpayers used in calculating the average land assessment of \$261,000 had a land assessment of only \$186,000 because an additional minus 25% reduction (-50% total) was applied to the land value by the Town to account for the fact this property had a holding tank for a septic system. For all these reasons, the board finds the Taxpayers comparison of their year-round Property to four seasonal properties with inferior property rights is of no value in determining whether the Property is disproportionately assessed.

The Town testified the Property's assessment was determined during the 2006 revaluation using a mass appraisal methodology which was consistently applied to all properties. As a result of this appeal, the Town performed the Analysis (Municipality Exhibit C) of the Property. The Town testified the Analysis was not a stand-alone or USPAP (the Uniform Standards of Professional Appraisal Practice) conforming appraisal but rather a property specific "check" on the assessed value. The Analysis contains a grid/spreadsheet on page 16 where the Town compared the Property to five, similar, year-round properties which had sold. After making what it considered appropriate adjustments for differences in various factors, the Town estimated the Property's market value to be \$700,000 on April 1, 2007. The board finds the Analysis is the only probative evidence submitted of the Property's market value in this appeal.

The third step in the process of determining whether an assessment is reasonable and proportional is to relate the Property's estimated market value to the Town's level of assessment. As stated previously, neither party disputed the Town's 98.8% median ratio (level of assessment)

determined by the DRA. The Town testified its market value estimate contained in the Analysis supports the Property's equalized assessment of \$699,595 ($\$691,200 \div 0.988 = \$699,595$) and indicates the Property is not disproportionately assessed. The board concurs.

For all the reasons discussed, the board finds the Taxpayers failed to prove disproportionality and the appeal is therefore denied.

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 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

Douglas S. Ricard, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: James C. and Susan L. Randall, 93 Weed Street New Canaan, CT 06820, Taxpayers; Bernard H. Campbell, Esq., Beaumont & Campbell Prof. Assn., 1 Stiles Road - Suite 107, Salem, NH 03079, counsel for the Town; and Chairman, Board of Selectmen, Town of Windham, PO Box 120, Windham, NH 03087.

Date: February 16, 2010

Anne M. Stelmach, Clerk