

Philip H. and Janet R. Macchi

v.

Town of Wolfeboro

Docket No.: 24005-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$421,300 (building only) on Map 172/Lot 27-25, a residential condominium (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 has disproportionately assessed the site value of the Property in relation to other units in the development;

- (2) the Property is not on the waterfront, and has a very limited view which is obstructed by garages, other buildings and 30-35 foot hemlock trees and birch trees;
- (3) when the Property was purchased, waterfront units were being sold for 30% more than the back units;
- (4) in 2008, unit 17 sold for \$550,000 and was assessed for \$423,600 and unit 20 sold for \$540,000 and was assessed for \$417,200; and
- (5) the sale of unit 28, which is in the same quadplex as the Property, has a slightly better view of the lake, has central air conditioning, forced hot air and a large deck and thus is a superior unit to the Property.

The Town argued the assessment was proper because:

- (1) the sale of unit 28 for \$425,000 in July 2006 was used to set the \$275,000 site value for non-water front units and the sale of unit 6, a waterfront property, for \$490,000 in February 2006 was used to set the \$350,000 site value for waterfront units;
- (2) because units 9 through 20 are set back further from the water and do not have 180 degree views, it was determined a \$275,000 site value was appropriate;
- (3) the site value of \$170,000 was used for tax map 58, a lot which has two buildings and a garage but no water access and no rights to the beach;
- (4) subsequent to the 2007 update, units 17 and 20 sold in 2008 for \$550,000 and \$540,000 respectively but the lower site values of \$275,000 for those units and others in similar locations have not been revised as a result of these sales; and
- (5) the Property is assessed proportionately.

The parties agreed the level of assessment in the Town was 99.7% in tax year 2008, the median computed by the department of revenue administration. On July 28, 2010, subsequent to

the hearing, the board members on their own took an exterior view of the Property and the various comparable condominium units within the complex testified to by the parties. The board has taken this view into consideration in making its findings in this Decision.

Board's Rulings

Based on the evidence, the board finds the Taxpayers' failed to carry their burden of showing disproportionate assessment. To carry their claim of disproportionality the Taxpayers have the burden to show the Property is assessed at a higher percentage of market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). As the board will detail in the following paragraphs, the Taxpayers presented evidence that other units in the complex were likely underassessed but no compelling evidence the Taxpayers' Property was overassessed.

It is well established law that all properties within a taxing jurisdiction must be assessed at the same general level of assessment. Appeal of Andrews, 136 N.H. 61, 64 (1992); Public Service of New Hampshire v. Town of Seabrook, 133 N.H. 365, 377 (1990); Appeal of Sunapee, 126 N.H. 214, 218 (1985); and Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 206 (1899). Also, the fact other properties may be underassessed does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of the 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.

The Taxpayers' Property is one of 28 units in a condominium development known as Pine Harbor that have common amenities including access to Lake Winnepesaukee. The 28 units are contained in seven 4 unit buildings ("quadplexes"). Five of the quadplexes (units 1-20) are on the lake side of the access road, Harbor Way, and to one degree or another have open or gladed views of the lake across the limited common area adjacent to Lake Winnepesaukee. The Taxpayers' Property is located in one of the two quadplexes across Harbor Way and behind the other five quadplexes closer to the lake. As a result, the eight units in these rear quadplexes, including the Property, have a significantly limited view of and to the lake through the gaps between the front five quadplex buildings. As the photographs of Taxpayer Exhibit No. 2 show and as seen by the board on its view, the "view" from the rear two quadplexes is dominated by the front quadplexes, garages and landscaping while the view from the front quadplexes is dominated by the lake and the lawns, landscape plantings, gladed trees and some common area improvements (decks and docks).

At the time of the Town's 2007 reassessment, the sale of unit 6, in one of the quadplexes nearer the lake, established a condominium site value of \$350,000 which the Town applied to only two (the two closest to the lake) of the five quadplexes with immediate views of the lake. The remaining five quadplexes, three with gladed views of the lake and the two quadplexes in the rear, had, in 2008, condominium site values of \$275,000. The Town testified this was derived from the July 2006 sale of \$425,000 for unit 28, the unit on the opposite end of the same quadplex as the Property. Subsequent to the 2007 reassessment, units 17 and 20, units in the fifth quadplex with gladed views of the lake sold in 2008 for \$550,000 and \$540,000 respectively.

The Taxpayers rightfully argue those sales indicate the units adjacent to the lake have a higher market value than their unit which has a limited and screened view of the lake. As noted above and supported by the cited case law, that does not prove, however, that the Taxpayers' Property warrants an abatement. While the Town's \$275,000 condominium site value application to three of the five front quadplexes may have resulted in their underassessment, it appears to have resulted in an assessment for the Property that is proportional to market value. The assessment of \$421,300 is less than the sale price of unit 28 of \$425,000 which has a larger deck and a forced hot air heating system (as opposed to electric) and also accommodates central air conditioning.

In short, what the Taxpayers have shown is the 2008 sales of units 17 and 20 indicate those units are likely underassessed but such evidence does not prove the Taxpayers were disproportionately assessed in relation to the Property's market value. As the above cases noted, proportionality is based upon market value, not necessarily relative proportionality between units. The Town should have reviewed market sales as they occurred and, pursuant to RSA 75:8, annually revised assessments "so that all assessments are reasonably proportional within [the] municipality." The Town was represented at hearing by Mr. David C. Wiley, the Town's contract assessor, and he stated his company's contract with the Town does not provide for such an annual review and updates if market data warrants. Nonetheless, RSA 75:8, regardless of any contractual arrangements the Town may have, requires the assessors ensure proportional assessments and make adjustments on an annual basis if warranted. Mr. Wiley did note the Town is in the process of performing an assessment update for tax year 2010 and presumably the variation in assessments presented in this case will be reviewed and corrected.

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

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: Philip H. and Janet R. Macchi, 15 Northwood Drive, PO Box 381, Walpole, MA 02081, Taxpayers; Chairman, Board of Selectmen, Town of Wolfeboro, PO Box 629, Wolfeboro, NH 03894; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: 8/2/10

Anne M. Stelmach, Clerk