

Edward and Barbara Hoyt

v.

Town of Ossipee

Docket No.: 24038-08PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$788,500 (land \$594,800; building \$193,700) on Map 44/Lot 19, 54 Long Sands Road, a single family home on 0.441 acres (the “Property”). (The Taxpayers also own, but are not appealing, Map 44/Lot 25, a 0.9 acre vacant lot assessed at \$1,100, and the parties do not dispute the proportionality of that assessment.) 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 assessment was excessive because:

- (1) both parties agree the board can take notice of the evidence presented in the Gaj v. Town of Ossipee, BTLA Docket No. 23980-08PT (“Gaj”), heard on the same day as this appeal, and the evidence of the two Long Sands Road sales in 2008 indicate the Property is overassessed;
- (2) both of the sales had more than average market exposure and a broker involved stated there was no duress involved;
- (3) the “divorce” sale situations referred to by the Town is distinct because they typically involve an intra-family transaction (at a price not exposed to the market), but 32 Long Sands Road was sold to a third party well after the divorce took place after being marketed through a broker;
- (4) the Town’s comparables included non-Long Sands sales where the land assessments were substantially less, explaining why those properties sold closer to their assessed values;
- (5) there are other waterfront locations in the Town (such as Hodsdon Shore Road) which have sandy beaches and comparable or better views (of Mount Washington rather than Mount Whittier), with land values that “average \$257,000 less for the same size lot and frontage”;
- (6) there was “euphoria” in the 2005 market for Long Sands Road properties, but this was an aberration and now land values are comparable to other areas on Ossipee Lake;
- (7) when markets change (as they have since 2005), so should assessed values; and
- (8) the assessed value should be abated by about \$250,000 based on adjusting the land value;

The Town argued the assessment was proper because:

- (1) the two 2008 Long Sands sales were both “unqualified” sales under the relevant assessing and state standards (Municipality Exhibits A and B in the Gaj appeal);

(2) the sale of 32 Long Sands Road was one under duress because a divorced seller could not afford to keep it, according to the Town's assessing clerk, and 36 Long Sands Road was also

unqualified because it was an estate sale of a house that was musty and had a mold issue;

(3) 'days on the market' is an unreliable metric for gauging whether the sale price is indicative of market value

(4) as noted in the Gaj appeal, the Town's 2005 revaluation analysis included four Long Sands properties that sold and supported the higher base rate of \$625,000 and this area continued to show a premium in value;

(5) to adjust one or two Long Sands assessments because these properties sold in 2008 would not be reasonable and the Town believes several 2009 sales show market values are still holding for waterfront properties in the Town and there are also several 2009 listings at above their assessed values;

(6) the Town is doing a revaluation in 2010; and

(7) no further abatement is warranted.

The parties agreed the level of assessment for tax year 2008 was 104.1%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$669,700. The appeal is therefore granted for the reasons stated below.

Assessments must be based on market value. RSA 75:1. 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).

As noted above, the Property is located on Long Sands Road, a neighborhood where two other properties sold in 2008 and the appeal of one of these properties (36 Long Sands Road, in the Gaj appeal) was heard on the same day. 36 Long Sands Road sold for \$450,000 in late September, 2008 and 32 Long Sands Road sold for \$540,000 in November, 2008. There were no other sales on Long Sands Road between 2005, the year of the Town’s last revaluation, and these two sales in 2008.

Sale price is one, but not necessarily the sole or conclusive, element in determining market value and the board therefore considers “all relevant factors . . . to arrive at a just result.” Paras, 115 N.H. at 67-68. The board has some discretion to decide how much weight should be given to this evidence because there are “numerous factors” that should be considered in the analysis of whether “sale price is an indication of fair market value.” Society Hill, 139 N.H. at 255 (additional citations omitted).

For the reasons stated in the Gaj Decision, the board weighed the conflicting testimony and arguments presented regarding how much weight could be given to these sales. (The parties disputed whether the Town was correct in giving no weight to these sales and treating them as “unqualified” because one, 36 Long Sands Road, was allegedly an “estate” sale and the other, 32 Long Sands Road, the result of a divorce.) The board also considered the four Long Sands Road

sales in 2005 before concluding the two 2008 sales were entitled to some, but not conclusive weight, and indicated a downward trend for market values. Notwithstanding this conclusion, and as also discussed in the Gaj Decision, the board finds Long Sands Road properties have historically had a cachet as the “best location” on Lake Ossipee which could partially be due to the western orientation and combination of mountain views and sunsets over the lake.

Considering the evidence as a whole, the board finds an abatement for tax year 2008 is warranted and can be calculated by revising the land base rate applied by the Town. In assessing the Property, the Town used a \$625,000 base rate for Long Sands Road, more than 50% higher than the base rate (\$400,000) applied to other waterfront properties in the Town. While there was justification for this adjustment in 2005, when the Town performed a revaluation and had four sales to base values on, the board finds the market changed significantly and properties that sold on Long Sands Road were no longer receiving that high of a premium compared to other properties in the Town on Lake Ossipee. As noted above, there were no sales of any of the 28 properties on Long Sands Road in either 2006 or 2007. In addition, the board heard testimony that the shallowness of the lake in this area made these properties somewhat challenging for both boating and swimming.

In brief, the board finds a lower premium (25%) is warranted by the evidence, including the two 2008 sales, as well as the photographs and other evidence submitted. Applying this lower premium results in a \$500,000 land base rate and a total abated land assessment (in the framework of the Town’s methodology and reflecting a 95% condition factor) of \$476,000. The Taxpayers did not dispute the Town’s building assessment of \$193,700. In total, therefore, the board finds the assessment for tax year 2008 should be abated to \$669,700. This abated

assessment reflects the varying factors (both positive and negative) affecting the Property's value after weighing the conflicting evidence submitted by the parties. See Paras, 115 N.H. at 67-68.

If the taxes have been paid, the amount paid on the value in excess of \$669,700 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 property pursuant to RSA 75:8, the Town shall use the ordered assessment 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

Edward and Barbara Hoyt v. Town of Ossipee

Docket No.: 24038-08PT

Page 7 of 7

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: Edward and Barbara Hoyt, 54 Long Sands Road, Center Ossipee, NH 03814, Taxpayers; Chairman, Board of Selectmen, Town of Ossipee, PO Box 67, 55 Main Street, Center Ossipee, NH 03814; David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm; and a courtesy copy to Patricia and Edward Gaj, 20 Sugarbush Lane, Andover, MA 01810.

Date: September 3, 2010

Anne M. Stelmach, Clerk