

David Crean

v.

Town of Wolfeboro

Docket No.: 24094-08PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2008 assessment of \$677,200 (land \$676,700; improvement \$500) on Map 251/Lot 23, a 0.54 acre lot with a detached deck (the “Property”). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality.

Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property is a seasonal lot located on a steep slope on a poorly maintained private road making access difficult;

- (2) the Property has been on the market since February, 2007 and there has been no activity until a recent offer (October 30, 2009) of \$350,000;
- (3) the Taxpayer has counter-offered to sell the Property for \$450,000 thus there is a willing buyer and a willing seller suggesting a market value of approximately \$400,000;
- (4) several properties which have been listed for sale support the assessments are excessive as shown by the listing sheets and photographs provided (Taxpayer Exhibit No. 2); and
- (5) the market value is close to \$450,000.

The Town argued the assessment was proper because:

- (1) although the Taxpayer is attempting to relate the value of the Property to the current purchase and sale agreement, the market has changed since the values were established in 2007;
- (2) the Taxpayer's comparables are questionable as one is an estate sale and others are not water front properties or are located in other municipalities with differing neighborhood and values;
- (3) the listing sheets support a range of \$600,000 to \$650,000 as of April 1, 2008; and
- (4) therefore, the Taxpayer has failed to prove the assessment is disproportionate.

The parties agreed the level of assessment in the Town was 99.7% for tax year 2008, the median computed by the department of revenue administration.

On July 28, 2009, the board, on its own, took a view of the Property and several of the comparables. 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 proper assessment to be \$532,200 (land \$531,700; deck \$500). This is based upon an estimation of a market value range of \$500,000 to

\$550,000 and reflected by increasing the topography adjustment for the lot on the assessment-record card to 0.70 to more accurately account for the steep unimproved access to the waterfront.

The parties presented sales that were difficult to definitively determine their arm's-length nature, the property rights involved and the effect of change in market. For example, the Town asserted the sale of Map 251, Lot 19 for \$900,000 in December 2006 was more reflective of market value than the Taxpayer's comparable, the adjoining lot (Map 251, Lot 20) which sold in October 2009 for \$420,000. The Town argued the Lot 20 sale was as a result of an estate settlement and yet the Town provided no evidence as to why that affected the sale price given the fact that both Lot 19 and Lot 20 were from related parties (Barstow Trust for Lot 19 and Anne Barstow for Lot 20). Further, the Taxpayer provided the listing history for Lot 20 which indicated it was initially listed in March 2007 for \$695,000 (only three months after the Barstow Trust had sold Lot 19 for \$900,000). Lot 20 then remained on the market with declining listing prices for 883 days until it closed on October 23, 2009 at the \$420,000 sale price. On one hand, for the board to accept the Town's assertion that Lot 20 should be given no weight because it is an "estate settlement," further substantiation to counter the long market exposure needed to be presented. On the other hand, it is inexplicable (with the exception of the passage of time and change of market) why the two lots sold at such a significant difference. Another example of the irreconcilable evidence submitted by both parties in whether Map 158, Lot 15 was lake front or brook front. In brief, the board considered all the market evidence submitted but found no sales that were "clean" and thus provided no definitive indication of market value.

On its view, the board noted several factors that the market would recognize. (In arriving at a proportionate assessment, all relevant factors affecting market value must be considered.

Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975)). The general access to the

neighborhood involves steep grades and, in particular, the Amley Way access is steep and unimproved. Any residential improvements would require significant road work and likely paving to allow reasonable access to the building site adjacent to the water front. The lot does have a reasonable area adjacent to the water front to accommodate a dwelling; however, the view of Wolfeboro Bay from that site is average at best and somewhat impeded by the boathouse on Lot 28.

Consequently, the board considers and weighs the listing history (and offer) of the Property, the available sales data and the physical attributes of the lot observed on the board's view and estimates its market value as of April 1, 2008 was \$500,000 to \$550,000. The board has adjusted the topography factor on the assessment-record card to reflect the steep and unimproved access to the lot and to result in an assessed value within the market value range noted above. If in the future the lot is developed and access improved, the assessment can be modified by the Town to reflect any increase in market value due to the improved access.

If the taxes have been paid, the amount paid on the value in excess of \$532,200 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).

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: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; 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