

Frank and Anne-Marie Sommer

v.

Town of Antrim

Docket No.: 24793-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$333,650 (land \$191,360; building \$142,290) on Map 214/Lot 043, 327 Elm Avenue, a single family home on 2.2 acres (the “Property”). For the reasons stated below, the appeal for further 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-; 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 a further abatement is proper because:

- (1) the Property's land assessment is disproportionate compared to the assessment on the land of an abutting property (37 Algonquin Road, the "LaPointe Property"), which has a similar lot size (1.7 acres versus 2.2 acres for the Property) and similar quality of waterfront;
- (2) as detailed in Taxpayer Exhibit No. 1, two vacant waterfront lots on Pierce Lake indicate the Property's land assessment is overstated and two improved waterfront property sales, after adjusting for location and other factors, indicate the Property's market value is \$297,000; and
- (3) an appropriate assessment for the Property should be based on this estimated value adjusted by the Town's level of assessment.

The Town argued the abated assessment was proper because:

- (1) the Town performed a revaluation in tax year 2009 and abated the assessment at the local level (from \$355,020);
- (2) the abutting LaPointe Property is not similar to the Property and has a different assessment for reasons the market would recognize, including a much longer distance from the house to the water (estimated to be 400 feet versus 100 feet for the Property), relatively poor access to the water (a gravel path for an ATV, all-terrain vehicle) and the inferior quality of the waterfront, and a real estate broker confirmed the market would view the Property to be superior;
- (3) the Taxpayers' land analysis is inaccurate because it compares unimproved lot sales to the Property's improved lot and the Town properly used a land curve to set the base value for various size lots, whereas the Taxpayers' analysis uses a straight-line methodology which does not reflect how the market reacts to lot sizes;
- (4) the Taxpayers' comparison of the Property to the two improved waterfront property sales has no merit; and

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

The parties agreed the level of assessment in the Town was 98.1%, the median ratio calculated by the department of revenue administration for tax year 2009.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied.

The Taxpayers did not present an appraisal to establish the market value of the Property. Instead, they relied on Taxpayer Exhibit No. 1, which contains a comparison of the land assessment on one abutting lot (the LaPointe Property), the "average" price per acre of a vacant waterfront lot (based on two vacant lot sales) and a grid comparing the Property to two sales of improved waterfront properties in 2007. The board finds none of these three points are sufficient to meet the Taxpayer's burden of proof in this appeal.

First, the board finds there are significant differences between the LaPointe Property and the Property that would result in different market values for each and therefore different assessments. These differences include distance to the water from the house (four times farther for the LaPointe Property), the access to the waterfront and the quality of the waterfront. (See Municipality Exhibits A, D and E.) Moreover, even if the two properties are assumed to be comparable, it is possible the LaPointe Property is underassessed rather than the Property being overassessed. The underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987).

Second, the market value of a buildable waterfront lot does not rise linearly with lot size, because potential buyers in the market would recognize the value associated with a buildable lot far more than any excess acreage that lot might also have. Thus, the Town reasonably employed

a “land curve” during the 2009 revaluation, rather than establishing waterfront land values based solely on an “average value” per acre applied to each lot. The board therefore does not agree with the Taxpayers’ argument that the land assessment on the Property should be based on the calculated average value per acre of two undeveloped waterfront lot sales (\$70,000) multiplied by the acreage of the Property (2.2 acres).

Third, the board does not agree with the grid analysis in Taxpayer Exhibit No. 1 comparing the Property to two improved waterfront lot sales (8 Keene Road and 108 Pierce Lake Road). The board first notes the Taxpayers failed to prove the percentage and dollar adjustments they made to these comparables were reasonable. In addition, even if the board were to agree negative ‘location’ and ‘slope’ adjustments to these comparables are appropriate, the Taxpayers made large quantitative adjustments supposedly based on adjustments shown on the respective property assessment-record cards. They erred, however, in applying these adjustments to the value as a whole (land and improvements) rather than just the land, the method the Town used on the assessment-record cards. (See Municipality Exhibit C.)

For example, the negative 20% adjustment applied by the Taxpayers to 8 Keene Road for location and slope overstates the market value impact because the land component is only about one-half the value of the Property as a whole (\$193,450 land assessment divided by \$352,980 total assessment equals 55%). Correcting the total negative adjustments for this overstatement increases the adjusted value from “\$299,000” to about \$337,000, which is very close to the indicated market value of the Property (\$333,650 assessment adjusted by the 98.1% level of assessment equals an indicated market value of \$340,100, rounded). For similar reasons, the board finds the large negative location adjustment made to the 108 Pierce Lake Property is

overstated and therefore finds the Taxpayers failed to meet their burden of proving disproportionality using this method.

For all of these reasons, 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Frank and Anne-Marie Sommer, 327 Elm Avenue, Antrim, NH 03440, Taxpayers; Chairman, Board of Selectmen, Town of Antrim, PO Box 517, Antrim, NH 03440; and Commerford Nieder Perkins, LLC, 556 Pembroke Street - Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: November 17, 2011

Anne M. Stelmach, Clerk