

Leora J. and Richard M. Wharton

v.

Town of Gilsum

Docket No.: 24817-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$175,133 (land \$51,233 (consisting of a \$44,000 ad valorem assessment and a \$7,233 current use assessment); and building (\$123,900)) on Map 406/Lot 31 (the “Property”), a single family home on 59 acres, with 58 acres in current use. 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 only one portion of the assessment was excessive because:

(1) in tax year 2009, the Town added a separate \$7,500 entry for “HILLSIDE/MTN VU,” an entry not made at any time since the Property was developed in 1978 (as explained in Taxpayer Exhibit No. 1);

(2) this 2009 change is illogical and also unfair because the limited view occurred only after a winter ice storm damaged some trees and the limited view is diminishing as the vegetation grows back in (as shown in the photographs in Taxpayer Exhibit No. 2);

(3) a “Land Appraisal Report” prepared by W.M. Borchers, a certified residential appraiser with Powers, Smith & Associates, Inc. (the “Borchers Appraisal,” part of Taxpayer Exhibit No. 1), estimates the market value of the land to be \$78,000 (as of April 1, 2009) and Mr. Borchers further comments the “views are common to many properties and in my professional opinion do not rise to a level that warrants taxation”; and

(4) the Taxpayers only dispute the \$7,500 element of their assessment and it should be eliminated, resulting in a total abated land assessment of \$43,733 (\$36,500 ad valorem and \$7,233 current use).

The Town argued the assessment was proper because:

(1) the Town performed a revaluation in 2009 and developed new land values which included a systematic analysis of views and their contributory values and documentation reflecting this analysis (see Municipality Exhibit C) was filed with the department of revenue administration;

(2) the Town followed a consistent assessment methodology and the \$7,500 “View Value” estimate for the Property is within a range of values from \$0 to \$87,500 assigned in tax year 2009 to various properties in the Town, based on uniform photographic standards which captured

the representative hills and mountain view from the house on the Property (see Municipality Exhibit B) and its effect in enhancing market value;

(3) the Borchers Appraisal should not be given any weight because it does not estimate the market value of the Property as a whole (but only the land value for 59 acres, “as vacant”), makes no adjustment for well and septic installation, acknowledges the Property has views of “Woods/Hills” and the appraiser further states “[t]he views to local hills are considered typical” (see Borchers Appraisal, sale comparison grid and Addendum page 1), acknowledging some views do exist; and

(4) the Taxpayers failed to meet their burden of proving the Property was disproportionately assessed.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2009. The appeal is therefore denied for the reasons stated below.

The Taxpayers contend the assessment is too high because, in the land valuation section of the assessment-record card, the Town included a separate \$7,500 line item representing the contributory value of the view. In order to prevail on this appeal, however, the Taxpayers had the burden of proving the assessment on the Property as a whole (i.e., land and buildings together) was disproportional, because this is how the market determines value, not whether one part of the assessment (such as the \$7,500 component) was proper.

In this regard, the supreme court has held the board must consider a taxpayer’s entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985); and RSA 75:1. Even if a taxpayer wishes to challenge only one component of

the assessment, the taxpayer still has the burden of proving the aggregate value of the Property as a whole is disproportional and the total assessment is excessive in order to obtain an abatement.

Appeal of Walsh, 156 N.H. 347, 356 (2007).

The Taxpayers presented no market value evidence other than the Borchers Appraisal. Mr. Borchers did not attend the hearing and therefore was not available for cross-examination by the Town or to answer board questions regarding his methodology for estimating value and his opinion (that the Property's views should not "warrant[] taxation"). Even if the board were to accept the Borchers Appraisal at face value, however, it is an appraisal only of the land and concludes the land had an estimated market value of \$78,000. (The only explanation given for this isolated land estimate they rely on is the Taxpayers' own testimony that they did not want Mr. Borchers to prepare an appraisal of the "whole" Property and therefore he did not do so.)

There are other questions and problems with the Borchers Appraisal. For example, and as the Town pointed out at the hearing, Mr. Borchers assumes the Property should be valued "as vacant," but in fact the Property is already cleared and developed with a functioning well and septic system, driveway and other site work and has been improved with a house assessed at \$123,900. In his appraisal, Mr. Borchers compares the Property "as vacant" with three others (in the Town, in Acworth and in Newport), one of which has a "cabin" on it for which he makes a nominal adjustment of \$5,000. Mr. Borchers states (on addendum page 1 of his appraisal) that "all pertinent physical factors were analyzed," but he did not take into account the site work and improvements on the Property and did not disclose he was making a hypothetical valuation based upon an extraordinary assumption that the land had not been improved at all.

In light of the substantial questions raised, the board finds the Borchers Appraisal has no probative value on the issue of whether or not the Property was disproportionately assessed for tax

year 2009. In making this ruling, the board carefully considered the arguments presented by the Taxpayers. The board recognizes the subject of ‘view assessments’ is controversial for some and the effect of a view on market value may not be as easily identified as other features that contribute to market value, such as the number of bedrooms or bathrooms, a garage, a waterfront location and other types of amenities. The Town and its assessors are charged with the responsibility for assessing all property in a consistent manner under RSA chs. 74 and 75 and all relevant factors affecting market value must be considered in arriving at a proportionate assessment. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

A recent appeal with some similarities to the present one is Taylor Real Estate Trust v. Town of Holderness, BTLA Docket Nos. 24485-08PT/25158-09PT (May 9, 2011), where a taxpayer attempted to challenge an assessment entirely because the municipality made three separate entries on the assessment-record cards (for waterfront, waterfront access and view) instead of a single entry, but did not submit market value evidence to establish the disproportionality of the assessment as a whole. The board dismissed the appeals after concluding much more was required and noting that, even if a flawed methodology by the municipality could be assumed or shown, that alone would not be sufficient for a tax abatement, citing Porter v. Town of Sanbornton, 150 N.H. 363, 368-69 (2003), as well as the Sunapee and Walsh decisions noted above.

The Town’s assessing contractor testified at some length regarding the process of how the contributory value of a view is assessed and the systematic methodology employed to assess properties fairly and equitably in the Town. This assessing company takes a representative photograph of the view from the first floor living area of each house (following a consistent practice), compares the quality of the view to other properties in the municipality, estimates the

contributory value of each view and then prepares a report, copied to the department of revenue administration, as shown in Municipality Exhibit C. The board finds this exhibit is a reasonable attempt to identify the contributory value of views to the market values of properties in the Town and was not shown to be a flawed methodology. A consistent assessment methodology is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). The board also considered the Town's analysis of four sale comparables which the Town used to conclude the Property was not disproportionately assessed and finds the Town's analysis and conclusion are reasonable. (See Municipality Exhibit A.)

The Taxpayers testified the vegetation on their Property, since the 2009 assessment date, has continued to grow back, reducing and limiting the view noted by the Town's assessor. Assessments are an annual process, see RSA 74:1, and to the extent there is evidence the contributory value of the view has diminished or been eliminated, the Taxpayers may have a basis for seeking an abatement in a subsequent year. Just as the erosion of a beach or reduction or elimination of some other amenity in a future year may impact market value, the elimination of a view may also do so.

For all of these reasons, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2009. The appeal is therefore 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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Leora J. and Richard M. Wharton, 31 Oak Drive, Gilsum, NH 03448, Taxpayers; Chairman, Board of Selectmen, Town of Gilsum, PO Box 67, Gilsum, NH 03448; and Sean M. Greene, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/7/11

Anne M. Stelmach, Clerk