

Edward and Virginia Carroll

v.

Town of Dorchester

Docket No.: 24966-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$304,800 (land \$80,900; building \$205,500; features \$18,400) on Map 15/Lot 926-1, a single family home on 5.1 acres (the “Property”). (The Taxpayers also own, but are not appealing, Map 15/Lot 925, a 4.67 acre vacant lot assessed at \$15,500; the parties did not dispute this lot was proportionally assessed.) For the reasons stated below, the appeal for abatement on the Property 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-; 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) the “150” condition factor the Town applied to the base value of the primary two acre site is unwarranted and inconsistent with the condition factors applied to other similar properties;
- (2) seven other properties in Town with similar or better land characteristics do not have any condition factor adjustments to their primary site values;
- (3) an appraisal prepared by Marcel Lascelle of Capital Appraisal Associates (the “Lascelle Appraisal,” Taxpayer Exhibit No. 1) estimated the Property’s market value to be \$265,000 on April 1, 2009; and
- (4) a revised and abated assessment should be calculated based on correcting the primary site value and the Lascelle Appraisal.

The Town argued the assessment should be revised and abated but not to the extent requested by the Taxpayers because:

- (1) the comparable sales used in the Lascelle Appraisal were “not as good” as the Property;
- (2) the adjustment for gross living area (“GLA”) should have been higher in the Lascelle Appraisal; and
- (3) the Town’s recommended adjustments, for the interior finish, the shop/woodshed and the land (revising the condition factor to 125 from 150), result in a revised assessment of \$283,200 that is proportional.

The parties stipulated the level of assessment for the Town for tax year 2009 was 105.2% the median ratio determined by the department of revenue administration.

Board’s Rulings

Based on the evidence, the board finds the proper assessment to be \$270,200. The appeal is therefore granted for the following reasons.

The Taxpayers argued for an abatement because the condition factor applied to their primary house site of “150” is unwarranted and disproportionate. The Taxpayers cited seven other properties that have similar locational, topographical, and view characteristics compared to the Property and all of which had a base rate condition factor of 100% resulting in a base site value of \$52,000. The Taxpayers contend these seven properties, two of which are located on the same dirt road as the Property, and most of which they had visited and viewed, show there is no valid reason for the Property to have a primary site value enhanced by 50%.

For this appeal, Mr. McSorley, the Town’s contracted assessor, and some members of the board of selectmen inspected the Property and agreed some adjustments were warranted. The first adjustment recommended was to reduce the land condition factor on the primary site from 150% to 125%, which resulted in a revised total land value assessment of \$67,900 (\$65,000 for the primary site plus \$2,900 for the excess land). Next, the Town recommended reclassifying what was formerly called the “machine shop” to a “wood shed,” resulting in a revised “features” value of \$16,000. Lastly, the Town adjusted the building value to reflect an “average” interior finish rather than a “custom wood” interior finish, resulting in a revised building assessment of \$199,300. Combining these three revised components resulted in the Town’s recommended revised assessment of \$283,200 (Municipality Exhibit A).

Further, Mr. McSorley testified the Town performed a statistical update in 2009. The statistical update, which was something less than a Town-wide full revaluation in scope, included looking at sales that occurred for the two years prior to April 1, 2009 and then consistently applying any adjustments indicated to the old physical data to develop new assessment values.

Upon cross examination by the Taxpayers and questioning by the board, Mr. McSorley could not explain the basis for the 150% condition factor previously applied to the Property's primary site. He could only speculate the previous assessor must have had some "plausible" reason to apply the condition factor he did. Further, and of greater concern to the board, he could not give any valid reasons to support the 125% condition factor recommended by the Town at the hearing as the appropriate adjustment to the primary site or why the Property's primary site condition factor should be anything other than the 100% applied to other similar properties.

The Taxpayers provided the Lascelle Appraisal as further evidence the Property was overassessed. The Lascelle Appraisal estimated the Property's market value to be \$265,000 on April 1, 2009. The Taxpayers testified they viewed some of the comparable sales used by Mr. Lascelle and generally agreed with his market value estimate. Mr. Lascelle, however, did not attend the hearing and therefore was not available to answer questions or to provide support for his value conclusion. Mr. McSorley contended the Lascelle Appraisal was not a reliable indication of the Property's market value because the comparable sales used by Mr. Lascelle were "not as good" as the Property and the adjustments he made for differences in GLA should have been larger. Upon questioning, Mr. McSorley admitted he did not view any of the comparable sales used in the Lascelle Appraisal but rather relied on the opinion of the board of selectmen's secretary, Ms. Linda Landry, who did not attend the hearing, regarding the quality of Mr. Lascelle's comparable sales. Further, Mr. McSorley did not provide or recommend any alternate GLA adjustment numbers to replace those used by Mr. Lascelle.

Weighing all of the evidence presented, the board finds the Property's abated assessment to be \$270,200 through the following calculations. Applying a "100" site condition factor to the

primary site yields a \$52,000 value. To that value must be added the \$2,900 value of the excess land for a total land value of \$54,900. The board has adopted the Town's recommended revisions to the building of \$199,300 and the extra features value recommendation of \$16,000. Adding these three components yields a total assessment for the Property of \$270,200.

If the taxes have been paid, the amount paid on the value in excess of \$270,200 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.

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: Edward and Virginia Carroll, PO Box 415, Canaan, NH 03741, Taxpayers; Chairman, Board of Selectmen, Town of Dorchester, 804 River Road, Dorchester, NH 03266; and John W. McSorley Consulting, 115 Kelsey Road, Nottingham, NH 03290, Contracted Assessing Firm.

Date: November 18, 2011

Anne M. Stelmach, Clerk