

Marshall H. and Marguerite P. Ford

v.

Town of Belmont

Docket No.: 25071-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 abated assessment of \$245,300 (land \$69,000; building \$176,300) on Map 226/Lot 020, 8 Jodi Drive, a single family home on a 1.8 acre lot (the “Property”). (The Taxpayers also own, but are not appealing, four other lots and the parties agreed those other lots were proportionally assessed.) For the reasons stated below, the appeal for abatement on the Property 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 for a further abatement because:

- (1) as shown in the photographs in Taxpayer Exhibit Nos. 1 and 2, the lot is a former gravel pit with no topsoil, is narrow and there is a long gravel driveway (400 feet) to the house;
- (2) the lot is located on an unpaved Class VI road and receives no Town services;
- (3) old single pane windows (from another house) were used rather than new windows and the garage under the house and basement are less finished than indicated by the Town's assessment; and
- (4) Taxpayer Exhibit No. 3 contains the assessment-record cards for comparable properties and this information supports an abatement based on a market value of no more than \$215,000 to \$220,000 for the Property.

The Town argued the assessment, as abated, was proper because:

- (1) the Town performed an update in 2009 (and did a prior revaluation in 2007);
- (2) during the mediation process, the Town abated the assessment from \$256,700 to \$245,300, as reflected in Municipality Exhibit A;
- (3) the house is "quaint", nicely built and simple in antique restoration;
- (4) while the windows may be outdated, they are adequate;
- (5) the Town applied a 10% adjustment to the land value to adjust for the topographical issues and the long driveway; and
- (6) the abated assessed value is fair and equitable and no further abatement is warranted.

The parties agreed the level of assessment in the Town was 102.6% in tax year 2009, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The appeal is therefore denied.

Assessments must be based on market value, adjusted by the level of assessment in the Town. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The Taxpayers presented no appraisal or other direct evidence of market value but Mr. Ford did state his belief, when questioned by the board, that the Property was worth no more than \$215,000 to \$220,000 as of the assessment date (April 1, 2009).

A market value of \$220,000, adjusted by the level of assessment of 102.6%, would mean a proportional assessment is \$225,700 (rounded) which is within eight percent of the abated assessment under appeal (\$245,300). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The board, however, finds the market value of the Property is somewhat higher than estimated by the Taxpayers and the abated assessment is proportional. A review of the assessment-record cards for other properties submitted as Taxpayer Exhibit No. 3 indicates a range of selling prices with the five in the upper range selling for \$240,000 to \$285,000. Closer examination of the land and building assessments also supports the proportionality of the assessment.

The board further finds the Taxpayers failed to prove the land is disproportionately assessed at \$69,000. The Town made reasonable adjustments to the land value to take into account the long driveway and other factors mentioned by the Taxpayers, applying a condition

factor of 90% and a further site index adjustment of 75% to the base rate. (See Municipality Exhibit A.) The twelve comparable assessment-record cards submitted by the Taxpayers show land assessments for developed house lots supportive of the Property's assessment, with all (except for one) having higher land assessments (ranging from \$72,500 to \$99,500) to reflect different lot sizes and other factors. The one exception (with a land assessment of \$59,800 for a 43,996 square foot lot, somewhat smaller than the Property, which has 78,408 square feet) is in a different neighborhood (Hunter Court) and has a lower street index adjustment applied to it. The Hunter Court property sold in January, 2008 for \$240,000, close to its total assessment of \$238,600, which is supportive of the land and building value components determined by the Town.

As to the building value, the board finds the Town's adjustments for the quality of construction (including the use of old windows) is reasonable. The Town applied a 2% functional depreciation factor to the building to arrive at the adjusted value of \$176,300 reflected on the assessment-record card (Municipality Exhibit A). If, for argument's sake, a larger functional depreciation factor of 5% is applied, the resulting building assessment would change only negligibly (by less than \$6,000), less than three percent of the abated assessment under appeal. The board finds not only is there no evidence to support a 5% adjustment but even if this adjustment was applied, the difference would be too small to warrant a further adjustment to the Property as a whole.

Last, the Taxpayers argued the assessment should be further reduced because the Property lacked Town services. Lack of municipal services is not necessarily evidence of disproportionality. As noted above, the basis for assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services would be reflected in the selling

prices of comparables and consequently in the resulting assessments. See Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992). The Taxpayers presented no evidence to support their belief that the lack of municipal services impacted the market value of the Property relative to comparable properties.

For 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

Michele E. LeBrun, Chair

Albert F. Shamash, Esq., Member

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Docket No.: 25071-09PT

Page 6 of 6

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Marshall H. and Marguerite P. Ford, 539 Province Road, Belmont, NH 03220, Taxpayers; Chairman, Board of Selectmen, Town of Belmont, PO Box 310, Belmont, NH 03220; and Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 4/3/12

Anne M. Stelmach, Clerk