

**Paul R. Connolly and Evelyn R. Connolly and
Walter L. Lord, Jr. and Brenda L. Lord**

v.

Town of Freedom

Docket No.: 25122-09PT

DECISION

The “Taxpayers”¹ appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessments on four vacant, unimproved lots (collectively, the “Property”), consisting of: Map 44/Lot 3 - 0.8 acres assessed at \$220,300; Map 44/Lot 3/1 - 1.5 acres assessed at \$95,100; Map 44/Lot 3/2 - 1.9 acres assessed at \$102,300; and Map 44/Lot 3/3 - 1.2 acres assessed at \$269,200. (The Taxpayers also own, but are not appealing, Map 44/Lot 3/4, 0.92 acres assessed at \$38,700 and the parties do not dispute the proportionality of the assessment on that lot). For the reasons stated below, the appeal for a tax abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments on the Property were 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

¹ The board has changed the caption of this appeal based upon the testimony of Evelyn Connolly, their representative at the hearing. She stated the Property was deeded to all four individuals. (See also Taxpayer Exhibit No. 2, a 1981 “Fiduciary Deed” listing each couple as grantees (Walter L. Lord, Jr. and Brenda L. Lord; and Paul R. Connolly and Evelyn R. Connolly) as “joint tenants with rights of survivorship” as to an “undivided one-half interest” in the Property.)

Taxpayers must show the assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the aggregate assessment was excessive because:

- (1) they purchased the Property located on Lake Ossipee in 1981 at auction (when it was one parcel; see Taxpayer Exhibit No. 2) and then subdivided it into five lots in 2007 (a four lot subdivision with one common lot);
- (2) they applied for and received tax abatements in tax year 2007 (which the Town also applied to tax year 2008) and they intended to market the Property in 2009;
- (3) when they contacted a real estate company (Select Realty), however, they were advised the Property was worth “\$500,000 to \$575,000,” well under the assessed value and they were agreeable to selling the Property at that price;
- (4) subsequent to the filing of their abatement request, they discovered title issues affecting the value of the Property because the State of New Hampshire decided to do repairs on the dam which would elevate the lake level by two feet; thus, there is a potential they do not actually own the waterfront; and
- (5) the assessment should be abated to a market value no higher than \$575,000.

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in tax year 2007 and the 2009 assessed values were based upon the abatements granted for tax years 2007 and 2008;
- (2) the Town’s tax maps reflect the Taxpayer’s ownership of the Property extends to the water’s edge (see Municipality Exhibit A);
- (3) the Taxpayers did not provide a market analysis or any other documentation to support a lower market value than indicated by the assessments;

(4) comparisons to other comparable properties in the Town show the assessments were proportional and within an acceptable range (see Municipality Exhibit A); and

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

The parties agreed the level of assessment in the Town was 103.8% in tax year 2009, the median ratio determined by the department of revenue administration.

Board's Rulings

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

Only one of the Taxpayers (Mrs. Connolly) attended the hearing and gave testimony, which the board considered carefully. Upon board questioning, Mrs. Connolly acknowledged the issues she mentioned pertaining to the right of way and the raising of the level of the lake did not surface until after the April 1, 2009 assessment date. The board therefore could give no operative weight to these issues as grounds for a tax year 2009 abatement.²

Assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). The very limited evidence presented on market value as grounds for abatement consisted entirely of Mrs. Connolly's oral testimony regarding what an agent at one real estate company thought the aggregate value of the Property might be worth if it was listed for sale. This estimate was apparently just an oral opinion and no writing to document this estimate was presented as evidence. Mrs. Connolly further testified an abatement to an aggregate value of \$575,000 was "strictly [an] assumption." The agent who gave her this

² In addition, testimony at the hearing indicates the State changed its mind about raising the level of the lake, due to public opposition to this proposal.

estimate did not come to the hearing to testify to explain his or her assumptions and reasoning in making this estimate or whether it was supported by any comparable sales or other analysis.

In contrast, the Town presented more substantial evidence to support its position the Property was proportionally assessed and not entitled to abatement in tax year 2009.

Municipality Exhibit A includes tax maps, assessment record-cards and the sale prices of other properties that generally support the assessed values of the Property. There was no evidence presented by the Taxpayers that the Town did not use the same assessment methodology and approach for all other property in the Town and this is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Town also stated it would have assessed the Property for a lower amount if it had not been subdivided into five lots. The Town recognized property that has gone through the subdivision process will have a substantially higher aggregate value than if it had remained an undivided parcel. The board finds much merit in this conclusion, absent any evidence to the contrary. See, e.g., Pauline J. Sanfacon Revocable Trust v. Town of Holderness, BTLA Docket No. 22922-06PT (April 14, 2009).³

³ As noted in Sanfacon, pp. 5-6:

In general, the process of fragmenting property rights, [such as] through subdivision into fee simple lots . . . , increases the value of the resulting, separated ownership interests (making the sum of the individual units worth substantially more than the unfragmented whole). Cf. Healey v. Town of Holderness, BTLA Docket No. 20254-03PT (September 13, 2006) (taxpayer failed to prove waterfront lot (land only) disproportionately assessed at \$1,314,100, where two parcels of land had been reconfigured and divided into three lots: “[t]here is no question this subdivision created value and the Town acted properly in assessing each party separately following the subdivision approval, just as it would if one land subdivider had owned all three buildable lots after the subdivision”); and Frisella v. Town of Gilford, BTLA Docket No. 16049-95PT (April 21, 1997) (taxpayer failed to present market value evidence to prove disproportionality of assessed property consisting of waterfront lot and back lot, where they “are separately transferable and achieve their highest value as separate lots” and this separation into two transferable lots “enhances the value”).

In estimating market value, all relevant factors must be considered. Paras v. Portsmouth, 115 N.H. 63, 67-68 (1975).

For all of these reasons, the board finds the Taxpayers did not meet their burden of proving disproportionality. 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

Michele E. LeBrun, Chair

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: Paul R. Connolly and Evelyn R. Connolly, 6 Westchester Drive, North Reading, MA 01864 and Walter L. Lord, Jr. and Brenda L. Lord, 10058 Boca Avenue S., Naples, FL 34109, Taxpayers; Chairman, Board of Selectmen, Town of Freedom, PO Box 227, Freedom, NH 03836; and R.B. Wood & Associates, 116 Fort Ridge Road, Alfred, ME 04002, Contracted Assessing Firm.

Date: 3/29/12

Anne M. Stelmach, Clerk