

Eric and Debra Fuchs

v.

Town of Newbury

Docket No.: 25128-09PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$357,600 (Land \$211,400; Building \$146,200) on Map 050/625/308 a 2.02 acre lot improved with a single-family residence (the “Improved Lot”), and \$200,800 on Map 050/649/290, a 1.04 acre vacant lot (the “Vacant Lot”) (collectively, the “Properties”). The Properties are adjacent to each other and have water frontage on Lake Todd. For the reasons stated below, the appeal for abatement is granted to the Town’s recommended assessments.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments 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 Taxpayers must show the Properties’ assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden but only to the amount of the Town’s recommended assessments.

The Taxpayers argued the assessments were excessive because:

- (1) several broker's price opinions ("BPOs") were submitted with various effective dates (ranging from 2002 to 2011) and estimates of market value (ranging from \$265,000 to \$447,500);
- (2) the Taxpayers offered the Improved Lot "for sale by owner" in 2007 with an asking price of \$494,000 and no offers were received; and
- (3) the Properties' water frontage is not as desirable as other waterfront properties on the lake and is generally described as "mucky muck".

As a result of its inspection of the Properties, the Town agreed the land assessments should be reduced based on the quality of the water frontage and to correct for a minor error on the Improved Lot's excess land. The Town stated the land assessment for the Improved Lot should be reduced by 20% and the neighborhood code should be reduced from 4.50 to 4.00 resulting in a revised assessment of \$316,300 and the assessment on the Vacant Lot should be reduced by 15% resulting in a revised assessment of \$170,700. The Town argued no further reductions in assessed values were warranted because:

- (1) the Properties' revised assessments are supported by several comparable sales of waterfront properties, five of which are located in Newbury and one in Bradford and are further supported by the assessment of four abutting properties (Municipality Exhibit A);
- (2) the adjustment to the Vacant Lot was somewhat smaller than the adjustment to the Improved Lot, because it is a nicer lot than the Improved Lot with the ability to construct a dwelling closer to the lake;
- (3) the Improved Lot has 568 feet of water frontage and the Vacant Lot has 215 feet of water frontage; and

(4) the recommended revisions to the Properties are supported by the comparable sales and assessment data and no further abatement should be granted.

The parties agreed the level of assessment in the Town was 94.3%, the median ratio computed by the department of revenue administration for tax year 2009.

Board's Rulings

Based on the evidence, the board finds the Properties' assessments should be revised to the Town's recommended assessed values as shown on Municipality Exhibit B. Therefore, the board finds the proper assessments to be: \$316,300 for the Improved Lot and \$170,700 for the Vacant Lot.

Under RSA 75:9, two or more tracts that have the same owner(s) must be appraised and described separately "if they 'do not adjoin' or if they 'are situated so as to become separate estates.'" Appeal of David H. Johnson, 161 N.H. 419, 423 (2011) (Citation omitted.) The Town has separately assessed the Properties because they became separate lots of record when they were subdivided by the Taxpayers some time in the late 1980s to provide "an extra lot for their children" and more recently when a "land line adjustment" was made to the Properties. It appears from the Taxpayers' testimony that the Properties had been assessed as one lot prior to the "land line adjustment" at which time the Town assessed the two lots separately because each lot is a separate lot of record and can be separately deeded. The Taxpayers argued the Town's land assessment on the Improved Lot increased significantly as a result and the land value should be reduced. They did not challenge the assessed value of the improvements on the Improved Lot. 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). Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value

or the building value, 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). In this appeal, the board must consider both the assessed value of the Improved Lot (land and building) and the Vacant Lot to determine if the Taxpayers' "entire estate" is disproportionately assessed.

Assessments must be based on market value adjusted by the level of assessment in the Town. See RSA 75:1; and Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In order to prevail in this tax abatement appeal, the Taxpayers have the burden of proving the market values of the Properties were less than \$380,000 for the Improved Lot and \$213,000 for the Vacant Lot, the assessments under appeal adjusted (divided) by the level of assessment in the Town for tax year 2009 (94.3%). The board finds the Taxpayers presented no compelling or probative evidence of the Properties' market values. In order to prove the Properties were disproportionately assessed, the Taxpayers should have made a showing that the market values of the Improved Lot and Vacant Lot were something substantially different than the Town's assessed values divided by its equalization ratio.

The Taxpayers presented a number of BPOs as evidence of the Properties' market values; however, these were recommendations made by real estate agents for listing/asking prices for the Properties, if and when the Taxpayers decided to offer the Properties for sale. Actual selling prices, when a property is properly exposed to the market, may be lower or higher than an asking price. Further, there was conflicting evidence as to whether the BPOs were estimates of value solely for the Improved Lot or for both the Improved Lot and Vacant Lot as one parcel; therefore, the BPOs were given little weight by the board. The Taxpayers testified they marketed the Improved Lot "for sale by owner" in 2007 at an asking price of \$494,000, but

no offers were received. Again, an asking price does not equate to market value, however, it is an indication of the Taxpayers' opinion of market value. The Taxpayers provided no indication of value of the Vacant Lot.

The Town presented evidence of comparable sales and comparable assessments and testified the Properties' revised assessments were arrived at using the same methodology used in assessing other properties in the Town. This testimony is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

In arriving at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993). Based on its review of all the evidence presented, the board concurs with the Town's recommendation that the condition factor for the land on both the Improved Lot and the Vacant Lot should be adjusted and the correction to the neighborhood should be made on the Improved Lot.

If the taxes have been paid, the amount paid on the value in excess of \$316,300 for the Improved Lot and \$170,700 for the Vacant Lot 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 Properties pursuant to RSA 75:8, the Town shall use the ordered assessments 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 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Eric and Debra Fuchs, 193 Route 103, Newbury, NH 03255, Taxpayers; and Chairman, Board of Selectmen, PO Box 296, Newbury, NH 03255.

Date: August 23, 2011

Anne M. Stelmach, Clerk