

Jonathan and Sue Ann Mackie

v.

Town of New Hampton

Docket No.: 25155-09PT

DECISION

The “Taxpayers” appeal the “Town’s” 2009 assessments on the following four lots (collectively, the “Property”):

Map R5/Lot 18 (“Lot 18”), a 46 acre lot, assessed at \$86,600;

Map R5/Lot 19 (“Lot 19”), a 113 acre lot, assessed at \$182,550;

Map R6/Lot 4A (“Lot 4A”), a 133.18 acre lot, assessed at \$314,100; and

Map R6/Lot 4C (“Lot 4C”), a 108.36 acre lot, assessed at \$276,350.

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 lots’ assessments were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers did not meet their burden of proving disproportionality and therefore the appeal for abatement is denied.

The Taxpayers argued the assessments were excessive because:

- (1) an appraisal prepared by a certified general New Hampshire appraiser (the “McLean Appraisal,” Taxpayer Exhibit No. 2) estimated the market value of the Property, considered as a single 400-acre parcel, was \$415,000 as of the assessment date;
- (2) Lots 18 and 19 are landlocked, which reduce their value; and
- (3) the total assessment should be abated to \$415,000 and allocated to each lot (based on the same percentage of the whole as established by the Town’s assessment-record cards).

The Town argued the assessments were proper because:

- (1) the Town performed a revaluation in tax year 2008 which established the assessed values of the four lots and then adjusted these assessments in tax year 2009 (after considering the McLean Appraisal);
- (2) the comparables and other data submitted by the Town in Municipality Exhibit A support the proportionality of the assessments; and
- (3) the Taxpayers failed to meet their burden of proving disproportionality and the appeal should be denied.

The parties agreed the level of assessment was 100.2% 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 meet their burden of proving the Property was disproportionately assessed. The appeal is therefore denied for the following reasons.

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 relied upon the McLean Appraisal in this appeal, which estimated a market value of \$415,000 for the Property. This “collective” value, however, was arrived at assuming the four individual lots were in fact one, larger lot.

The board finds the McLean Appraisal does not carry the Taxpayers’ burden for several reasons. The first and most important reason is that this appraisal makes a “collective” market estimate of the four lots that comprise the Property instead of estimating a separate market value for each lot. This collective market value estimate provides no indication of the market value for each of the individual lots under appeal.

In brief, a comparison of the market value of a single 400-acre parcel to the value of the same 400-acre parcel subdivided into four lots is akin to comparing apples to oranges. The market value conclusions in the two scenarios are almost invariably substantially different and a market value indication for one scenario is not necessarily indicative of a market value indication in the other. This is because the process of fragmenting property rights, whether through subdivision into fee simple lots or the creation of condominiums, increases the value of the resulting, separated ownership interests (making the sum of the individual units worth substantially more than the unfragmented whole). See, e.g., Pauline J. Sanfacon Revocable Trust v. Town of Holderness, BTLA Docket No.: 22922-06PT (April 14, 2009) at pp. 5-6; and Pamela J. Healey v. Town of Holderness, BTLA Docket No.: 20254-03PT (September 13, 2006) at p. 4.

The board reviewed the McLean Appraisal in detail to attempt to determine if the three comparable sales it referenced could be utilized to estimate the market value of the individual lots under appeal, but there was insufficient information in the appraisal to do so with any degree of reliability. The board could make only a very limited comparison between these sales and the lots under appeal, such as for differences in time of sale, size and location. However, there was

insufficient information presented for the board to make any adjustments regarding highest and best use and/or utility of those properties when compared to the lots under appeal. Consideration of these factors is critical when estimating the market value of vacant land.

The appraisal states the Property is zoned “General Residential” and its highest and best use is its “[p]resent use”. (Taxpayer Exhibit No. 2, p. 3.) At the very least, the board would need to know if the comparable sales have a similar highest and best use. In fact, there is no evidence of any highest and best use analysis in the McLean Appraisal. In addition, the Taxpayers failed to provide the assessment-record cards for each of these three comparables as required by the board’s rules. (See Tax 201.33(f) and Tax 201.34.) The assessment-record cards could possibly have provided some information lacking in the McLean Appraisal and assist the board in revealing the comparability of different parcels of land which may have different topography, access and other attributes.

Unanswered questions arising from the Taxpayers’ presentation and its reliance on the McLean Appraisal include: are the comparable sales zoned similarly, or are they zoned for agricultural, industrial or commercial uses? what were the comparable sales purchased for? For instance, Comparable Sale No. 3 in the McLean Appraisal is a 372-acre lot in Lyme. The board does not have any evidence before it to determine if it was purchased for development of a single-family residence with buffer and no further subdivision potential, a multiple lot, single-family subdivision, a commercial or industrial development or any other use. There was no evidence presented to the board to answer these and other questions.

There are additional problems with the McLean Appraisal, including some errors and inconsistencies which were not addressed at the hearing. For example, in the appraisal Mr. McLean mentions a 5% size adjustment (“-5%” for “[l]ots under 200 acres”), but in actuality he

adjusted the Franklin sale (120 acres) and the Newbury sale (177 acres) by 10% each, not 5%. Also, the appraisal makes a minus 10% “superior” location adjustment for one comparable (in Lyme) but does not explain why he considers the other two locations to be comparable and to require no adjustment. It is not at all clear why land held for “future residential development” (this appraiser’s highest and best use for the Property) would be just as desirable/valuable, from a location point of view, in the Town compared to Franklin or Newbury. Another unanswered question is why Mr. McLean felt a “-12%” annual time adjustment “since January of 2008” is appropriate for raw land. No market data or analysis is referenced to support this assumption. Mr. McLean also made a generalized adjustment for what he calls “access/amenities,” finding all three comparables to be “superior” to the Property by a 20% factor, but failed to provide any meaningful detail to support this adjustment.¹

Finally, there is no indication Mr. McLean verified each of the three sales to assure himself that they were arm’s-length sales reflective of market value or whether there were special financing or other conditions tied to each sale. As Mr. McLean did not appear at the hearing to address these issues, the board is unable to give any weight to his appraisal.

The board finds the Town’s assessment of the four individual lots was proper and in compliance with its statutory obligations.² The Town submitted substantial information, including excerpts from its assessment manual showing how land values were determined, a rear

¹ All the McLean Appraisal states is that this adjustment considered “road frontage, quality of access roads, the existance [sic] of, when applicable, of interior roads and amenities such as ponds, rivers and streams.”

² RSA 674:37-a states:

[i]f... subdivision... has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality, then such lots or parcels shall for that tax year be assessed and appraised as separate estates pursuant to RSA 75:9, whether or not any such sale or transfer has actually occurred, and shall continue to be so assessed unless and until subdivision approval is revoked under RSA 676:4-a, or the parcels are merged pursuant to RSA 674:39-a.

acreage schedule showing adjustment factors and values per acre for lots of different sizes throughout the Town, additional photographs of the Property showing its topography and other physical characteristics and assessment-record cards for other parcels of land in the Town. (See Municipality Exhibit A.) This evidence reflects consistency in the Town's assessment methodology, which is some evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

In addition, the Town, using the same, consistent methodology, submitted a hypothetical assessment-record card indicating a proposed assessment of \$455,300 if the four lots were merged. (See Municipality Exhibit A, "Combined Lots.") This hypothetical assessment is consistent with the board's findings regarding the value added by subdivision of one large parcel into four lots.

For all of these reasons, the board finds the Taxpayers did not meet their burden and 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

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jonathan and Sue Ann Mackie, 26 Campground Road, Meredith, NH 03253, Taxpayers; Chairman, Board of Selectmen, Town of New Hampton, 6 Pinnacle Hill Road, New Hampton, NH 03256; and Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, NH 03275, Contracted Assessing Firm.

Date: 4/3/12

Anne M. Stelmach, Clerk