

Paul T. and Colleen G. Foote

v.

Town of Deerfield

Docket No.: 25487-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” tax year 2010 abated assessment of \$460,300 (land \$276,800; improvements \$183,500)¹ on Map 207/Lot 043, 215A North Road, a single family, waterfront home on 0.310 acres (the “Property”). For the reasons stated below, the appeal for further abatement 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. The board finds the Taxpayers failed to prove disproportionality.

¹ This abated value was mentioned at the September 11, 2012 hearing of this appeal and is confirmed in the Town’s October 2, 2012 letter and attachments.

The Taxpayers argued the abated assessment was still excessive because:

- (1) the Property is on a shallow, dark cove on Pleasant Lake, in an area with a “mucky bottom” and the water level is drawn down periodically which inhibits boating (see Taxpayer Exhibit Nos. 3 - 5), all of which factors detract from its value;
- (2) the land was overassessed by the Town (but the Taxpayers do not dispute the building value);
- (3) an appraisal prepared by Louis C. Manias (the “Manias Appraisal” - Taxpayer Exhibit No. 2) estimated the market value of the Property was \$425,000 as of the assessment date and one of the comparables (#1) in the Manias Appraisal, 251 North Road, sold in October, 2010 for \$400,000;
- (4) the house and driveway are situated close to Route 107 and the traffic causes a lot of noise to be heard from the deck of the home; and
- (5) the assessment should be further abated to \$400,000.

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

- (1) the Town performed a valuation update in 2010 (see Taxpayer Exhibit No. 1);
- (2) the Taxpayers purchased the Property in May, 2008 for \$499,900, after it was listed in March, 2008 and was on the market for a reasonable period of time, and the purchase price is a good indication of value;
- (3) the Town’s assessing contractor inspected the Property, compared it to other properties (see Municipality Exhibit A) and, due to water condition, recommended an additional adjustment, which the Town’s board of selectmen accepted, and the Town has processed tax refunds to reflect an abated value which is proportional;
- (4) the “trended value” of the purchase price is within approximately 2% of the indicated value of the abated assessment; and
- (5) the appeal should be denied.

The parties agreed the level of assessment was 101.6%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers failed to prove the Property was disproportionately assessed in tax year 2010. The appeal is therefore denied for the reasons discussed below.

In order to be proportional, assessments must be based on market value. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). In arriving at a proportionate assessment, all relevant factors affecting market value must be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

To determine whether a tax abatement is warranted based on disproportionality, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

One of the Taxpayers, Mr. Foote, attended the hearing to argue for an abatement. He relied primarily on the Manias Appraisal and his own testimony to support his conclusion that

the market value of the Property was only \$400,000 as of the April 1, 2010 assessment date. The Manias Appraisal, however, estimates a higher value (\$425,000) and, in any event, does not provide a credible basis for concluding the Property was disproportionately assessed in tax year 2010.

The Manias Appraisal used three comparable sales (one in the Town, one in Northwood and one in Strafford) with selling prices ranging from \$400,000 to \$550,000. The assessment on the Property reflects a market value near the middle of this unadjusted range of values² and the board is not persuaded his adjustments to these comparables, including the time adjustments, were reasonable.

Mr. Manias, who did not attend the hearing to explain his methodology or the adjustments he made to these sales, lists as a fourth “Comparable” in his appraisal the prior sale of the Property to the Taxpayer for \$499,900 on May 23, 2008. Our supreme court has noted the “price paid by the owner” of a property can be “one of the best indicators of that property’s value.” Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988), quoting from Poorvu v. City of Nashua, 118 N.H. 632, 633 (1978).

The Manias Appraisal further states the Property was originally listed for sale by the previous owner for \$599,900 (and then also for \$649,900 when a lot “across the street” was added) before the Property was sold. Mr. Manias applied a negative 11.5% time adjustment to the purchase price for the date of sale (a total of \$57,489) and calculated an indicated value of “\$442,411.” This presentation is some evidence Mr. Manias considered the sale to be arm’s-length and reflective of market value. Moreover, applying a more conservative time adjustment

² \$460,300 assessed value divided by 101.6% level of assessment = equalized market value indication of \$453,000, rounded.

(say 8%) would result in a market value indication, using Mr. Manias' methodology, of \$459,900, rounded, which is supportive of the abated assessment under appeal. (See fn. 1.)

At the hearing, Mr. Foote described several features of the waterfront and the building location which led him to conclude the Town had overassessed the Property. His appraiser (Mr. Manias), however, did not note these features in his appraisal as factors unduly affecting the market value of the Property in his use of the sales comparison approach and the Taxpayers failed to present any other market value evidence to support their assertions that the land was overassessed. In the board's experience, many lakefront properties are subject to seasonal water level changes and muddy shoreline conditions (instead of a pristine, sandy beach and a stable water level, for example). The Town made a negative adjustment to the assessed land value in abating the 2010 assessment and the Taxpayers failed to show this adjustment was not reasonably adequate to account for the condition of the water front and the other factors mentioned at the hearing.

Finally, the law governing a tax abatement appeal requires consideration of the Taxpayers' entire estate, not just one component such as the land value. Even if a taxpayer wishes to challenge only one component of the assessment, such as the land value (but not the building value), he or she 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). The Taxpayers did not do so.

For all of these reasons, the appeal for a further tax abatement in tax year 2010 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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Paul T. and Colleen G. Foote, 215A North Road, Deerfield, NH 03037, Taxpayers; Chairman, Board of Selectmen, Town of Deerfield, PO Box 159, Deerfield, NH 03037; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 12/11/12

Anne M. Stelmach, Clerk