

Bruce Melton

v.

Town of Deering

Docket No.: 25542-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$336,100 (land \$218,300; building \$117,800) on Map 235/Lot 23, 604 Cellar Hole Road, a single-family residence on 1.6 acres with 262 feet of frontage on Deering Lake (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) in a prior appeal (filed for tax year 2008), the Taxpayer raised similar issues and the board found the proper assessment to be \$317,700, but the Town increased the assessment in 2010 even though the conditions pertaining to the value of the Property described in the prior appeal have not improved (see Melton v. Town of Deering, BTLA Docket No. 24188-08PT);
- (2) as detailed in Taxpayer Exhibit No. 1, the Property is situated very close to a public beach, the Town has “augmented the beach area with sand” which migrates to the Property and has led to “increased noise and errant dogs visiting” the Property, which detracts from its value;
- (3) on average, assessed values decreased by about 10%, according to the Town, but the Property’s assessment went up, “for no apparent reason,” by about 5.8% (from \$317,700 in 2008 to \$336,100 in 2010); and
- (4) the assessment for tax year 2010 should be abated to \$300,000, as stated in the appeal document.

The Town argued the assessment was proper because:

- (1) the Town performed a statistical update in tax year 2010;
- (2) when a revaluation occurs, some properties increase in value and others may decrease and the Town is not bound to retain the value in 2008 and then discount it further;
- (3) the map and photos submitted (Municipality Exhibits A and B) show the Property is on the waterfront, but is some distance from the public beach and is buffered by dense foliage and the Town made adjustments to the land value (shown on the assessment-record card) to account for the conditions noted by the Taxpayer; and
- (4) the Taxpayer failed to present any market value evidence to establish disproportionality.

The parties agreed the level of assessment in the Town was 98.5% in tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayer failed to prove the assessment for tax year 2010 was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). To prevail in this appeal, the Taxpayer had the burden of establishing the market value of the Property was below the equalized value reflected in the abated assessment. (\$336,100 abated assessment divided by 98.5% level of assessment = \$341,200, rounded, indicated market value as of April 1, 2010 assessment date.)

As the Town's assessor explained at the hearing, the Town made substantial adjustments to the land value for the conditions noted by the Taxpayer. The "Notes" section of the card indicates the Town made a negative 25% adjustment for topography and a negative 25% adjustment for location because of the proximity of the "public beach" and "noise." The Taxpayer did not present any market evidence that would allow the board to conclude a larger adjustment was warranted in tax year 2010. He did not, for example, present an appraisal or any other independent witness (such as a real estate broker) to confirm the negative features he testified about would adversely impact the market value of the Property.

When the Town undertakes a statistical update, as it did in tax year 2010, it is not uncommon for assessments to rise on certain properties and fall on others or for values to increase or decrease at different rates, both in absolute numbers and in percentages, since the objective of this process is to correct for any prior discrepancies and to update values based on current market information. Cf. Appeal of Town of Sunapee, 126 N.H. at 217-19.

Assessments are not intended to be fixed and unchanging but are instead subject to periodic revaluations, as frequently as annually but “at least as often as every fifth year,” and the Town selectmen have the responsibility to determine assessed values based on market data and other information. See RSA 74:1; RSA 75:1; RSA 75:8-a; and, e.g., Town of Hudson v. State Dep’t of Rev. Ad., 118 N.H. 19, 21-22 (1978) (selectmen’s responsibility rests on statutes and state agency cannot compel municipality to use specific values).

In addition, simply calculating an average percent change in assessed values throughout the Town and applying that percentage to the Property is not probative of disproportionality. At the hearing, the Town’s assessor cited a recent decision, Peterson v. Town of Deerfield, BTLA Docket No. 25616-10PT (September 25, 2012), where the board stated (at p. 3):

[E]mphasis and reliance on comparing percentage changes in the assessments of one component (land) on . . . other properties, rather than on market value evidence, is misplaced. Neither percentage increases nor decreases over prior assessments are, in and of themselves, probative on the issue of disproportionality. See, e.g., Bacon v. Town of Enfield, BTLA Docket No. 24850-09PT (March 12, 2012) at pp. 3-4 (“[N]ew assessments can be expected to vary between properties, both in absolute numbers and in percentages. Consequently, the board could give no weight to the [t]axpayer’s arguments regarding differential percentage increases.”).

The board cannot determine the Property was disproportionately assessed in tax year 2010 simply by using, as the Taxpayer suggests, a prior year finding that an abatement was warranted (for tax

year 2008) and adjusting that abated value downward by a percentage to set a lower assessed value two years later.

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

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Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bruce Melton, PO Box 116, Hillsborough, NH 03244, Taxpayer; Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Road, Deering, NH 03244; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date:

Anne M. Stelmach, Clerk