

Andrew and Barbara Chartier

v.

Town of Epsom

Docket No.: 25644-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$229,400 (land \$226,500; improvements \$2,900) on Map U06/Lot 14/5, a 6.58 acre lot with a shed on Dover Road (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 Taxpayers carried this burden.

The Taxpayers, represented by Mr. Chartier, argued the abated assessment was still excessive because:

- (1) the market value of the Property was no more than \$150,000 (in tax year 2010) as reflected in the real estate broker marketing materials (Taxpayer Exhibit Nos.1 and 2) and the two sales described in the appeal document;
- (2) the Property consists of mostly wetlands and only an area of about 160 feet x 160 feet (roughly ½ acre) near Dover Road is useable;
- (3) the Property has a shared driveway with a neighboring property and a drainage ditch (in the State's right-of-way) along the road frontage prevents additional points of access or development, which further diminishes value; and
- (4) the assessment should be further abated to reflect a \$150,000 market value.

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

- (1) the Property is in a very good location approximately 1,500 feet from the Epsom traffic circle and the Town valued it in a manner comparable to other properties on Dover Road;
- (2) the broker marketing materials submitted by the Taxpayers are not independent appraisals, are inconsistent with each other and rely on some listings of properties (that did not sell) and some sales of improved and unimproved properties that are not comparable;
- (3) Mr. Chartier showed the Town a site plan (not presented at the hearing) depicting a building envelope approximately one acre in size with well and septic locations, which indicates more of the land is useable than argued by the Taxpayers;
- (4) the Town's analysis (Municipality Exhibit B) estimates a range of value (\$227,850 to \$273,275), the equalized value of the abated assessment (\$235,500) is at the lower end of this

range and this analysis is more credible than the Taxpayers' evidence as the sales are closer to the Property and were more recent; and

(5) during the mediation process, the Town reduced the assessment (from \$245,500 to \$229,400) by adjusting the land condition factor (from 375 to 350) on the assessment-record card ("ARC," see Municipality Exhibit A) and no further abatement is warranted.

The parties agreed the level of assessment in the Town was 97.4%, the median ratio calculated by the department of revenue administration. One of the Taxpayers, Mr. Chartier, attended the hearing and requested the board take a view of the Property and the board did so on August 31, 2012.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$187,200, rounded, in tax year 2010 (based on the additional adjustments for 'topography' and condition explained below). The appeal is therefore granted.

The Town's abated assessment, adjusted by the level of assessment, reflects an equalized market value indication of \$235,500, rounded. (\$229,400 assessed value divided by 97.4% level of assessment.) The Taxpayers argued a further abatement is warranted because the Property was not worth more than \$150,000 as of the April 1, 2010 assessment date. While the board finds, based on the evidence as a whole, including the view taken, that a further abatement is warranted, the Taxpayers did not produce sufficient, credible evidence to meet their burden of proving the market value was as low as \$150,000 in 2010.

The Taxpayers relied on Mr. Chartier's testimony regarding the condition of the Property and on broker marketing materials he had obtained and given to the Town which are summarized below. The board could not place as much weight on these materials (as it might on an

independent, professional appraisal) for several reasons. Such materials are often prepared for a different purpose (such as to persuade a property owner that a broker is more responsive to his or her needs or concerns and therefore should be given the listing). None of the brokers attended the hearing to testify as to the basis of their opinions and to answer questions regarding them. Moreover, use of such materials to establish market value is especially problematic when, as here, the brokers differ so substantially in their ‘recommended pricing’ of the Property.

One marketing proposal prepared by Judith Potkay (“Potkay I,” Taxpayer Exhibit No. 1)¹ contains an October 21, 2010 transmittal letter and states a “recommended price” for the Property in the range of “\$241,262 to \$266,658.” This estimate, if accepted at face value, would support the proportionality of the assessment, but the board could give it no weight. To arrive at her estimate, Ms. Potkay relied on four property listings, but there is no evidence these properties ever sold. The two sales in Potkay I [1569 Dover Road, a 3.3 acre developed lot with a relatively large building (3,860 square feet) which sold for \$177,500, and Lot 82-E, Suncook Valley Highway, a subdivided vacant lot with an approved building site plan, which sold for \$91,000] are the two sales mentioned in the Taxpayers’ appeal document, where they calculate the “median average” (\$134,250) to support of their \$150,000 market value estimate. Leaving aside the validity of this approach, neither the Potkay materials nor the Taxpayers provided sufficient detail to allow the board to determine the comparability of these two sales to the Property.

A second marketing proposal prepared by Joanie McIntire (“McIntire,” Taxpayer Exhibit No. 2) approximately one year later (October 13, 2011) states her opinion that the Property has a “range value of \$105,000 to \$115,000.” Among the sales listed in McIntire is 1730 Dover Road,

¹ The Town obtained from one of the Taxpayers, Mr. Chartier, a second marketing proposal from this same broker (“Potkay II,” Municipality Exhibit D). Potkay II is not dated and has a different “recommended price” of “\$104,165 to \$115,130.” At the hearing, Mr. Chartier was not able to explain the discrepancy between Potkay I and Potkay II.

a four acre lot which sold for \$120,000 in April, 2005, five years before the assessment date and six and one-half years before the date of the McIntire opinion. As the Town noted, older sales are less reliable than more recent sales, especially when no appropriate time adjustments are considered or applied.

The Town further noted the Potkay and McIntire broker marketing proposals were inconsistent with each other and contain widely different estimates of value. The board agrees they are so divergent with each other that their credibility is significantly eroded.

The Town presented three sales of its own to rebut the Taxpayers' claim that the Property was worth no more than \$150,000 and to support the proportionality of the assessment as already abated. These three sales are all on Dover Road and the Town made adjustments to each of them for size, "condition" and other factors and determined the adjusted sale prices indicate a range of value between \$227,850 and \$273,275. (See Municipality Exhibit B.) The Town argued the abated assessment of \$229,400 is proportional because it reflects a value (\$235,500) at the lower end of this range. The board does not agree.

Upon review of the ARCs the Town provided for these three sales, the board noted they all had higher condition factors than the Property (400 or 375 compared to 350), reflective of their better location. The Town applied relatively large "gross" adjustments (\$148,200 and \$341,725, respectively) to Comparable #1 and Comparable #3 in Municipality Exhibit B, making them less reliable as market value comparables than Comparable #2, which had a lesser, but still significant, gross adjustment (\$47,150). The board finds the magnitude of these adjustments reflects the fact these sales may not be truly comparable to the Property. Although they are all on Dover Road, at least two of the three sales are closer to the Epsom traffic circle. On the view, the board noted these properties are also somewhat dissimilar from each other and from the

Property. One was acquired for use by Concord Hospital as a medical office facility, the others for retail automotive/machinery facilities and one was considerably larger in size (45 acres).

On the view, the board observed the location of the Property, including its topography and shared driveway, as well as the existence of substantial wetlands and the drainage easement at the front of the Property. This easement is located in a swale between the useable portion of the Property and Dover Road and the swale is somewhat below grade, reduces the utility and therefore the value of the frontage on Dover Road. There is no dispute the Property is also impacted by the existence of wetlands associated with Mason Brook. Mason Brook, as shown on the Town's tax map (Municipality Exhibit C), runs through and bisects the Property. These observations confirm the key point made by Mr. Chartier in his testimony that the Property was less desirable, and therefore less valuable, than other properties along Dover Road, including the three sales presented by the Town in Municipality Exhibit B.

Viewing the evidence as a whole, the board finds the Taxpayers met their burden of proving disproportionality and the assessed value of the Property for tax year 2010 should be abated to \$187,200, rounded. The board arrived at this finding by accepting as reasonable most of the adjustments shown on the ARC (Municipality Exhibit A), but reducing the condition factor to "300" and adjusting the "Topo" (topography factor) on the primary land to "90" (so that it is consistent with the factor applied to the excess land).

If the taxes have been paid, the amount paid on the value in excess of \$187,200 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 property pursuant to RSA 75:8, the Town shall use the ordered assessment 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 (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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Andrew and Barbara Chartier, 173 Portsmouth Street, Concord, NH 03301, Taxpayers; Chairman, Board of Selectmen, Town of Epsom, PO Box 10, Epsom, NH 03234; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: September 10, 2012

Anne M. Stelmach, Clerk