

Christine Zampell

v.

Town of Wolfeboro

Docket No.: 25755-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$348,400 (land \$176,600; building \$171,800) on Map 171/Lot 4, 17 North Keewaydin Shore, a single family home on 0.71 acres (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 carried the burden of proving disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property was assessed as if it had water access (as shown on the assessment-record card), which it does not have;

(2) while the Taxpayer and her husband together own other lots, including a waterfront lot (16 North Keewaydin Shore), that ownership should not affect the assessed value of the Property under New Hampshire law;

(3) sales of three houses of comparable size (900 to 1,200 square feet) in Taxpayer Exhibit No. 1 show the Property was disproportionately assessed;

(4) as shown in Taxpayer Exhibit No. 2, the Property (designated “7-5-26”) has a deeded right-of-way to an adjacent lot (“7-5-27”) but not to the waterfront lot owned by the Taxpayer and her husband;

(5) the Property only has a limited water view and the septic system is shared with 16 North Keewaydin Shore;

(6) there is no interior access to the basement from the house, but only access through an outdoor “bulkhead” and some “functional depreciation” should be applied for this condition;

(7) as shown in Taxpayer Exhibit No. 3, the Town differentiated between waterfront and non-waterfront lots owned by the same or related owners and did not assess the non-waterfront lots for water access; and

(8) the assessment should be abated based on a market value of \$200,000 to \$225,000 for the Property adjusted by the level of assessment.

The Town argued the assessment was proper because:

(1) the three undeveloped lots in Taxpayer Exhibit No. 1 are not located near the water, have no water views, are in non-comparable neighborhoods and an undeveloped lot sells for less than a developed lot;

(2) the location of the Property near the water and the view mentioned by the Taxpayer are positive factors influencing value;

- (3) the Town's assessor relied on the Town attorney's opinion regarding how common ownership of the other lots had a positive impact on transmissible value, as stated in the Town's May 26, 2011 letter to the Taxpayer's representative;
- (4) the assessment-record cards in Municipality Exhibit A support the proportionality of the assessment; and
- (5) if the board determines the Property does not have water access, the assessed value of the land should be reduced from \$176,600 to \$105,900, rounded ($\$98,100 \text{ base rate} \times 1.2 \text{ neighborhood adjustment} \times 0.9 \text{ for shared water and septic} = \$105,948$).

The parties agreed the level of assessment was 99.5% in tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayer met her burden of proving the Property was disproportionately assessed in tax year 2010 and the assessment should be abated to \$277,700. The appeal is therefore granted for the following reasons.

A key issue underlying the Town's assessment is whether or not the Property has water access. The board finds the Taxpayer met her burden of proving the Property has no water access. The fact that she and her husband own other lots, including a waterfront lot, does not increase the transmissible value of her separate estate in the Property. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985); and, e.g., Buckley v. Town of Webster, BTLA Docket No. 20523-03PT, et al. (June 9, 2006) at pp. 6-7.

At the hearing, the Town's assessor acknowledged the assessed value of the land without water access would be lower: he calculated a land value of \$105,900, which the board finds to be a reasonable adjustment based upon the evidence presented on the water access issue. The board

considered the rest of the Taxpayer's arguments, including the sale comparables in Taxpayer Exhibit No. 1 and the bulkhead basement access issue, and finds they do not merit a further abatement of the assessment because there was no evidence presented of a measurable effect on market value. Adding the \$105,900 abated land value to the \$171,800 building value results in a total abated assessment of \$277,700.

If the taxes have been paid, the amount paid on the value in excess of \$277,700 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 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, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Wolfeboro, PO Box 629, Wolfeboro, NH 03894; and David C. Wiley, PO Box 40, Melvin Village, NH 03850, Contracted Assessing Firm.

Date: 7/9/13

Anne M. Stelmach, Clerk