

D. Lyn Hubbard-Shure, Scott Hubbard and John Hubbard

v.

Town of Ossipee

Docket No.: 25779-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” tax year 2010 assessment of \$197,100 (land \$99,100; building \$98,000) on Map 65/Lot 20, 10 Forest Lane, a single family home on 0.321 acres (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 board finds the Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

(1) the Property consists of a small cape-style house on a lot that abuts a golf course, occupied by the Taxpayers’ mother, who purchased it for \$107,600 (in September, 2009 from “FannieMae”) and transferred it to the Taxpayers (her children) in January, 2010;

- (2) while the golf course (“Indian Mound”) is an amenity, the location of the Property is not as desirable as other homes located across the course that have better views but lower assessments (as shown in Taxpayer Exhibit No. 1);
- (3) compared to those other properties, the Property has the further disadvantage of being closer to Route 16 with its attendant traffic and noise and, in addition, the house faces the maintenance building and golf cart storage areas situated on the golf course;
- (4) a “Comparative Market Analysis” (included in Taxpayer Exhibit No. 2) indicates the Property should be listed for no more than \$117,200; and
- (5) the assessment should be substantially abated based on this lower value.

The Town argued the assessment was proper because:

- (1) the assessment on the Property is consistent with other assessments of properties abutting or having views of the golf course;
- (2) the assessment and sales data compiled by the Town (in Municipality Exhibits A and B) are supportive of the proportionality of the assessment; and
- (3) the appeal should be denied.

The parties agreed the level of assessment in the Town for tax year 2010 was 102.1%, the median ratio calculated by the department of revenue administration.

On April 10, 2013, the two board members who heard this appeal drove to the Town and took a view of the Property and other properties mentioned by the parties. On April 15, 2013, the board directed its review appraiser, Cynthia L. Brown, CNHA, to conduct an investigation and submit a report. Ms. Brown filed her “Report” on May 23, 2013 and the parties were given

fourteen (14) days to file written comments. The Town submitted a May 28, 2013 response¹ and was directed to send a copy to the Taxpayers. The Taxpayers filed no comments on the Report.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers met their burden of proving disproportionality and the assessment on the Property should be abated to \$142,900, rounded (\$140,000 estimated market value adjusted by the 102.1% level of assessment in tax year 2010). The appeal is therefore granted.

In arriving at a proportionate assessment, the board considers all relevant factors affecting market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). To arrive at a judgment regarding proportionality, the board applies its learning and experience in taxation, real estate appraisal and valuation. See RSA 71-B:1; see also RSA 541-A:33, VI. Determining the proportionality of an assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

The board reviewed the testimony and documents submitted at the hearing, information gained from the view of the Property and the neighborhood, the Report and the Town's written comments. As noted above, the Property is situated on a golf course, but is on a relatively small lot (0.321 acres) with a two bedroom, one bath cape-style house having approximately 1,000

¹ In its comments, the Town provided further details regarding three properties mentioned in the Report. None of these sales, however, were relied upon by the board in reaching its market value conclusions.

square feet of finished first floor space and an unfinished ½ (second) story. The house is of newer construction (built in 2005) and appears to be well-maintained. (Report, Addendum A.)

The board finds the September, 2009 purchase price of the Property (\$107,600), seven months prior to the April 1, 2010 assessment date, is not indicative of its value because it was a bank sale resulting from a foreclosure. (Id.) As shown on the assessment-record card (“ARC”), the Town considered this an “unqualified” sale. According to the ARC, the prior owner purchased the home in February, 2006 for \$199,000 and this was a “qualified” transaction, reflective of market conditions at that time.

The board reviewed the sales data presented at the hearing and in the Report. The board finds the three most comparable sales that could be independently verified as arm’s-length transactions reflective of the market are: 8 Captain Lovewell Lane, which sold in October, 2009 for \$108,000; 10 Captain Lovewell Lane, which sold in November, 2009 for \$106,000; and 7 Forest Lane, which sold in October, 2010 for \$137,500. Adjusting for differences in size, age/condition and dates of sale, the board finds these market-based transactions indicate the Property had a likely value of approximately \$140,000 as of the April 1, 2010 assessment date.

The board could not place weight on other sales at higher prices insofar as some of them were not listed and others sold on terms that could not be confirmed. The board also could not give undue weight to the Taxpayers’ undated Comparative Market Analysis. This document concludes the “recommended price” for the Property should be “\$117,200,” but is not an appraisal, makes no adjustments for differences among the three sale comparables and was prepared by one of the Taxpayers, a local real estate broker who has a direct interest in the outcome of this appeal.

The board considered all of the other arguments presented by the parties prior to arriving at its findings. For example, the Taxpayers noted the proximity of the Property to the “highway” (Route 16), the relative distance of the Property to amenities such as the beach, the docks, the pool and the clubhouse and the fact the golf course view from the Property is arguably less than optimal (facing the maintenance building and golf cart storage area). The board also reviewed the Town’s sales data and all of the ARCs that were presented as evidence.

On balance, the board finds the golf course location adds contributory value to the Property and the three sale comparables noted above are in the same neighborhood and share most, if not all, of the attributes noted by the Taxpayers. The board finds the other sales relied upon by the Town in support of the assessment include properties in a different neighborhood, some of which were larger and had other features (such as a garage) which made them superior to the Property.

In summary, the board estimates the market value of the Property as of the assessment date was approximately \$140,000 and the assessment should be abated to \$142,900 (based on the 102.3% level of assessment in tax year 2010).

If the taxes have been paid, the amount paid on the value in excess of \$142,900 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: D. Lyn Hubbard-Shure, PO Box 126, Ossipee, NH 03864, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Ossipee, PO Box 67, 55 Main Street, Center Ossipee, NH 03814; and Granite Hill Municipal Services, PO Box 1484, Concord, NH 03302, Contracted Assessing Firm.

Date: 7/26/13

Anne M. Stelmach, Clerk