

Norman G. Glidden

v.

City of Laconia

Docket No.: 25784-10PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2010 assessment of \$338,400 (land \$245,100; building \$93,300) on Map 196/Lot 322/9, 168 Hillcroft Road, a single-family residence on a 0.44 acre lot with 100 feet of frontage on Pickerel Cove (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) the Property, located on Pickerel Cove and Paugus Bay (the Property's only access to Lake Winnepesaukee), can only be accessed by small craft (19 feet or less) "even in the best of conditions" (when the water level is high);
- (2) the water is not suitable for swimming and other recreational activities due to a milfoil infestation and in prior years the City deducted 10% for this condition, but not in tax year 2010;
- (3) Hillcroft Road is a private road and the Property receives very limited municipal services, with no road maintenance and no garbage pickup;
- (4) the comparable properties, including 199 Hillcroft Road, which has frontage on Paugus Bay, and another lot (owned by Laschi) show that some assessments have decreased (see Taxpayer Exhibit No. 1), while the Property's assessment increased by approximately \$100,000 during the City-wide 2010 revaluation;
- (5) the Taxpayer built the log home thirty (30) years ago and it is virtually the same house, with little or no changes, and he is not disputing the building component of the total assessment; and
- (6) the assessment should be abated to \$239,200 for tax year 2010 (the amount it was assessed for prior to the 2010 revaluation).

The City argued the assessment was proper because:

- (1) the City performed a full revaluation of all properties in tax year 2010;
- (2) the 199 Hillcroft Road property cited by the Taxpayer had an ad valorem value of \$744,000, over 36 acres of that property is in current use and, contrary to the Taxpayer's belief, does not have frontage on Paugus Bay (see Municipality Exhibit B);
- (3) the other lot on Hillcroft Road had its assessment reduced because it was determined to be an unbuildable lot;

(4) sales in this neighborhood (designated “PC”) support the proportionality of the assessment and all the properties in this neighborhood, including the Property, were assessed on a consistent basis (see Municipality Exhibit A); and

(5) the Taxpayer failed to meet his burden of proving disproportionality.

The parties agreed the level of assessment in tax year 2010 was 98%, the median ratio calculated by the department of revenue administration. The Property is located on the same private road (Hillcroft Road) as another property for which the board heard a tax year 2010 appeal on the same date: Puleo Family Exempt Trust v. City of Laconia, BTLA Docket No. 25873-10PT. The parties agreed the board could take official notice of the evidence presented in each appeal during its deliberations.

After the hearing of these appeals on September 5, 2012, the board directed its RSA 71-B:14 review appraiser, Cynthia L. Brown, CNHA, to inspect the Property, review all of the evidence submitted and perform an independent valuation. The board is authorized to engage its review appraisers for this purpose under this statute. See Appeal of Sokolow, 137 N.H. 642 (1993).

Ms. Brown completed her Summary Appraisal Report (“Report”) on November 29, 2012, and arrived at a market value opinion of \$350,000 as of the April 1, 2010 date of assessment. The parties were provided with copies of the Report on that date and given twenty (20) days to file written comments. Neither party has done so.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden of proving disproportionality and the appeal is denied.

“In an abatement case, the Taxpayer has the burden of proving by a preponderance of the evidence that the Property at issue was assessed disproportionately to other property in the Town.” Appeal of Sokolow, 137 N.H. at 643. 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. (\$338,400 assessment divided by 98% level of assessment = \$345,300, rounded, indicated market value as of April 1, 2010 assessment date.)

The Taxpayer presented information regarding the land component of the assessment (\$12.78 per square foot), and compared it to several other properties in the City (ranging from \$4.28 to \$9.10 per square foot). (See Taxpayer Exhibit No. 1.) However, he did not provide the board with any information regarding how those properties may be similar to or distinct from the Property, and how any differences should be accounted for. Additionally, the Taxpayer testified to the sales price of several properties and how those sale prices compared to their assessed values, but did not correlate that information to the Property and its market value, which is a crucial step in prevailing in a property tax appeal.

To carry his burden, the Taxpayer should have made a showing of the Property’s market value, which would then have been compared to the Property’s assessment and the general level of assessment in the City. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The Taxpayer did not present a market analysis or an independent appraisal to provide an opinion of market value.

The Taxpayer testified he “agreed” with the improvements component of the assessment, but disagreed with the land component. Even if a Taxpayer wishes to challenge only one component of the assessment, such as the land value or the building value, the Taxpayer 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 Taxpayer indicated he did not understand why, during the 2010 revaluation, his assessed value increased substantially (approximately \$100,000) because the assessed values of other properties in the City either increased, but to a lesser degree, or decreased. When a municipality undertakes a full revaluation, as the City 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.

The Taxpayer testified the Property is located on a private road and the City does not provide plowing or trash pick up services. Lack of municipal services is not necessarily evidence of disproportionality. The basis of assessing property is market value. See RSA 75:1. Any effect on value due to lack of municipal services would be reflected in the selling prices of comparables and consequently in the resulting assessments. See Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992).

Arriving at a proper 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) (use of judgment in selecting valuation methodology and assumptions). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition

of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The Report prepared at the board's request is a summary appraisal and was based on a physical inspection of the Property by Ms. Brown, consideration of many sales (before she chose the three most comparable), and development of an estimate of value using the sales comparison approach. The comparable sales are waterfront properties in the City and sold between March, 2009 and April, 2010. They sold with prices ranging from \$345,000 to \$575,000, and, after adjustments were made for market conditions and physical differences, provided a range of market value indications from \$345,400 to \$409,800. Ms. Brown reconciled toward the low end of the range, stating "sale #1, located on the same road as the Subject and with the least amount of adjustments was given the most weight." (Report, p. 12.)

The board finds the comparable sales included in the Report to be good indications of market value for the Property, and that the adjustments made were reasonable and generally well supported. Therefore, the board finds the best evidence of market value to be the \$350,000 market value opinion arrived at in the Report. When adjusted by the level of assessment, this market value estimate is supportive of the assessment under appeal. ($\$350,000 \times .98 = \$343,000$.)

There is no evidence before the board to allow it to conclude the Property's 2010 assessment was disproportional. For all these reasons, the appeal 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

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Norman G. Glidden, 2A Laurel Crest Drive, Waterford, CT 06385, Taxpayer; and Chairman, Board of Assessors, City of Laconia, 45 Beacon Street East, Laconia, NH 03246.

Date: 1/28/13

Anne M. Stelmach, Clerk