

Wayne and Janet Soule Clark

v.

Town of Washington

Docket No.: 25951-10PT

DECISION

The “Taxpayers”¹ appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 abated assessment of \$242,100 (land \$229,800; improvements \$12,300) on Map 20/Lot 153, 491 Long Pond Road, a seasonal camp dwelling on 0.7 acres on Highland Lake (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.

¹ Janet Soule Clark, who jointly owns the Property with her husband, Wayne Clark, was added to the caption for this appeal, by consent of the parties at the hearing.

The Taxpayers argued the abated assessment was still excessive because:

- (1) an independent appraisal by Paula Clemente of Whittemore Appraisal (the “Whittemore Appraisal,” Taxpayer Exhibit No. 1) estimated a market value of \$185,000 as of the assessment date;
- (2) as stated in the appeal document, the market value of the Property was actually much lower (\$132,000) when the periodic flooding of the lake, resulting in the house being inundated with 3 ½ feet of water, is taken into consideration (see photographs in Taxpayer Exhibit No. 2);
- (3) the Town’s comparisons to year-round houses on other parts of the lake are not valid and the limited abatement granted by the Town (to \$242,100) is not adequate and results in the same assessed value as in 2005; and
- (4) the assessment should be further abated based on a market value of \$132,000.

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

- (1) the Town performed an inspection of the Property and abated the assessment (from \$249,000 to \$242,100);
- (2) the Property has desirable excess frontage on Highland Lake (a total of 350 feet) which the Town took into account, along with the “rocky” shoreline, when it established the land condition factor of “200” shown on the assessment-record card;
- (3) the Town evaluated the Taxpayers’ claims for a larger abatement and concluded there were sales on Highland Lake which their appraiser did not use and comparable assessments (shown in Municipality Exhibits A through D) which supported the proportionality of the assessment, as abated; and
- (4) the appeal should be denied.

The parties agreed the level of assessment in the Town was 106.6% 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 Taxpayers, represented by Mr. Clark at the hearing, met their burden of proving disproportionality and that the assessment on the Property for tax year 2010 should be abated to \$192,100. The appeal is therefore granted for the following reasons.

To determine whether a tax abatement is warranted, the board considers and weighs all of the evidence presented, utilizing its “experience, technical competence and specialized knowledge.” See former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board must employ its statutorily countenanced ability to utilize its “experience, technical competence and specialized knowledge in evaluating the evidence before it.”) Further, in making market value findings, the board must determine for itself issues of credibility and the weight to be given each piece of evidence because “judgment is the touchstone.” See, e.g., Appeal of Public Serv. Co. of New Hampshire, 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974) and Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

Mr. Clark testified the Property was the “oldest property on the lake” and has been in Mrs. Clark’s family for a long time. The seasonal camp structure on the Property is quite small in size (360 square feet) and very modest in its features (use of lake water and cesspool system, no heating or cooling system and, as noted on the Town’s assessment-record card, sagging floors and “sills gone”), all reflective of its highest and best use as a seasonal camp. The building and

wood shed have a total assessed value of only \$12,300 in 2010. The Taxpayers do not dispute the relatively nominal improvements value for the building and shed, but challenge the proportionality of the \$229,800 assessed land value and argue for a further abatement.

The board finds the Whittemore Appraisal provides a reasonable starting point for determining the proportionality of the assessment. Paula J. Clemente, CRA, who prepared this appraisal, used five comparable lake front sales and one listing, calculating a relatively wide range of adjusted values (\$133,200 to \$218,400).² Ms. Clemente reconciled her market value estimate of \$185,000 in the upper end of this range. (See Whittemore Appraisal, pp. 3, 7 and 8.) The Taxpayers contend this value is too high and the Town contends it is too low. The board, based on the evidence presented, has made its own determination of market value as of the assessment date.

The Property has substantially more lake frontage than all of the comparables in the Whittemore Appraisal (350 feet compared to a range of 54 feet to 175 feet) and this is clearly a value-enhancing feature. One comparable, 530 Long Pond Road (Comparable No. 4), is situated just two lots from the Property (as shown in Municipality Exhibit C) on the same road and is somewhat larger in size (1.2 acre lot with 756 square foot structure), but has less lake frontage (175 feet) than the Property. In addition, as shown in Municipality Exhibit C, the road divides the lot and the house is situated on the inland side of the road. This house location probably makes 530 Long Pond Road less desirable than the Property. According to the Whittemore Appraisal (p. 8), this property was “on the market for more than two years at \$175,000 but it was not listed on the MLS [Multiple Listing Service]” and was then sold privately (with no broker involvement) in December, 2009 for \$112,500 when “the owner was motivated to sell.”

² If one comparable discussed further in this Decision (530 Long Pond Road, Comparable No. 4) is excluded, Ms. Clemente’s value range narrows considerably (to \$167,800 to \$218,400).

In the appeal document and at the hearing, Mr. Clark placed primary emphasis on this sale and arrived at his own estimated market value of \$132,000 for the Property by adding “\$20 thousand” to the sale price of this one comparable. While the board understands Mr. Clark’s explanation for focusing on this one sale, neither the Taxpayers’ own appraiser nor the Town found it reasonable to do so because one sale does not necessarily reflect how the market would value the Property. The board agrees and has so held in prior decisions. See, e.g., Anastasiou Family Rev. Trust v. Town of Litchfield, BTLA Docket No. 24223-08PT (August 19, 2010),

p. 4:

Because focusing on just one sale can be misleading and result in distortions, qualified appraisers and assessors are expected to examine a range of comparable sales, properly adjusted, to arrive at an informed and reliable estimate of market value. Looking at a number of properties and their price range is reasonable because this is how market participants, including buyers, sellers and real estate brokers, not just appraisers and assessors, tend to value property.

Citing Robert D. Lepine Revocable Trust v. City of Nashua, BTLA Docket No. 21495-05PT

(August 7, 2008), p. 5:

[W]here there is evidence of other sales of similar properties, all market data must be considered in determining whether the assessment is disproportionate or not. Said another way, individual sales are proxies for market value and no one sale is empirically definitive of a property’s market value.

Consequently, the Taxpayers’ disagreement, largely because of one sale, with the value conclusion of their own appraiser is not persuasive, especially when there is some evidence the seller was atypically motivated and may not have adequately exposed the 530 Long Pond Road property to the market.

In reviewing the Whittemore Appraisal, the board had questions regarding certain of the adjustments Ms. Clemente made which resulted in a lower market value estimate, such as the negative adjustments for “Location” applied to all but one of the comparables. Ms. Clemente did

not attend the hearing and therefore could not provide answers to questions regarding her assumptions and methodology. Based on the evidence presented, the board finds smaller adjustments than the ‘5% and 10%’ negative adjustments to the sale prices (\$9,600 to \$24,900, applied by Ms. Clemente to all but one of the comparables) are appropriate. Using its judgment and experience, the board finds the market would place less emphasis on this feature because the Property is a seasonal camp and a knowledgeable buyer would not necessarily expect it to have “superior access” on a private road or a town maintained road. (See Whittemore Appraisal, p. 7.) Applying smaller negative adjustments for this factor and others to the comparable sales would bring the market value indication in the Whittemore Appraisal to a range of \$200,000 to \$210,000.

Another approach to arriving at a reasonable market value conclusion is to consider the “Washington Lakefront Land Sales” listed by Ms. Clemente on page 9 of the Whittemore Appraisal. These sales (ranging in price from \$151,500 to \$170,000) support a finding that the Property, properly adjusted for differences in lake frontage, lot size and potential proximity of a building site to the water (a ‘grandfathered’ feature of the Property not associated with these vacant land sales), and including the value of the improvements, had a market value in the range of \$200,000 to \$210,000.

The Town’s three assessors (Kathy Atkins, Lynn Cook, CNHA, and Arline France) attended the hearing and presented evidence to explain why they placed no weight on the \$185,000 market value conclusion in the Whittemore Appraisal and why the Property was not disproportionately assessed at \$242,100 in tax year 2010 using the Town’s mass appraisal system and valuation model. The Town’s presentation included a map of Highland Lake which designates the locations of comparable sales and assessments (Municipality Exhibit C),

photographs of the Property and other properties on Highland Lake to show their relative lake front attributes (Municipality Exhibits A and B), and assessment-record cards and other information (Municipality Exhibit D), as well as the assessors' testimony.

Upon review, the board does not agree with the comparability of the primary sales presented as part of the Town's evidence in Municipality Exhibit D. Two of the three sales ("Mercier" and "Ciotti") in one part of this exhibit were "unqualified" sales and therefore the Whittemore Appraisal cannot be faulted or criticized for not considering them in arriving at its value conclusion. All three of these sales involved much more substantial, year-round homes (several of which were newly constructed), rather than very modest (and much older) seasonal camps, and these differences with the Property are reflected in their higher selling prices (\$243,733, \$475,000 and \$600,000, respectively).

Review of the Property's assessment-record card indicates the Town used a base value of \$100,000, applied a "200" condition factor, added "50" for excess frontage and subtracted "50" for a "rocky" lake front, but made no explicit adjustment for the periodic flooding problems testified to by Mr. Clark. The board has reviewed the photographs showing the extent of flooding of the house (in Taxpayer Exhibit No. 1) and Mr. Clark's testimony. Based on the evidence presented, there is little doubt that, when the lake level rises beyond a certain level, the house is flooded with as much as 3 ½ feet of water and other properties on Highland Lake are not impacted in the same manner because of different topography and house location.

The board finds the prospect of substantial periodic flooding of the house is a factor the market would recognize as a negative, similar to how it would view a rocky shorefront. The Whittemore Appraisal (p. 7) describes the Property as having "steep slope conditions" and notes the "narrowness of a section of Long Pond Road," further stating the Town may have applied an

“access factor” to other neighborhoods where this condition was present. Subtracting “50” for the cumulative effect of these negative factors on the market value of the Property reduces the lake front component of the land valuation calculated on the Town’s assessment-record card from \$200,000 to \$150,000 and leads to an abated land value of \$179,800. Added to the \$12,300 assessed value of the improvements, the total abated assessed value becomes \$192,100.

When the 106.6% level of assessment in the Town is taken into account, the equalized market value of an abated assessment of \$192,100 for tax year 2010 is \$205,000, rounded. A market value finding of \$205,000 as of the assessment date is supported by the evidence presented and correlates to the Whittemore Appraisal (after appropriate adjustments are applied, as discussed above).

For all of these reasons, the board finds the 2010 assessment on the Property should be abated to \$192,100 (land \$179,800; improvements \$12,300). The appeal is therefore granted.

If the taxes have been paid, the amount paid on the value in excess of \$192,100 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: Wayne and Janet Soule Clark, 45 Shermans Way, Marshfield, MA 02050, Taxpayers; and Chairman, Board of Selectmen, Town of Washington, 7 Halfmoon Pond Road, Washington, NH 03280.

Date: March 18, 2013

Anne M. Stelmach, Clerk