

Robert Searle and Helen Grembowicz

v.

Town of Deering

Docket No.: 26038-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment of \$189,800 (land \$163,900; improvements \$25,900) on Map 235/Lot 53, 301 Driftwood Isle, a seasonal home on 0.449 acres (the “Property”). For the reasons stated below, the appeal for abatement is denied.

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 failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is on an island (Driftwood Island) on Deering Reservoir and, like all island properties, does not receive some municipal services (such as schools and fire protection) and can only be accessed by boat (allowing only for seasonal, not year round, use);

(2) in tax year 2010, the Town increased the assessments on island properties while decreasing assessments on mainland waterfront properties and the Taxpayers learned of two mainland properties which sold at about the same time as the Property, one of which (44 Zoski Road) had a 33.4% increase in its assessment and the other (65 Zoski Road) had a 9.1% decrease in its assessment (see Taxpayer Exhibit No. 1);

(3) they did purchase the Property for \$195,000 in September, 2009 because they had wanted to buy an island property for some time and the sale included personal property (a boat valued at \$4,500); and

(4) the assessment for 2010 should be abated to \$130,600, by reducing the condition factor from 72 to 35 and leaving the building value unchanged.

The Town argued the assessment was proper because:

(1) the Town performed a statistical update in tax year 2010;

(2) Driftwood Isle is a very desirable location, with properties that are rarely on the market, and the Taxpayers admitted paying \$195,000 to buy the Property in September, 2009 in an arm's-length, market transaction;

(3) the Town's analysis of this sale and three other waterfront sales (in Municipality Exhibit B) supports the proportionality of the assessment; and

(4) the Taxpayers failed to meet their burden of proving disproportionality and the appeal should be denied.

The board held a consolidated hearing of four tax year 2010 abatement appeals on October 24, 2012. All four, including this appeal, involve property on Driftwood Island located on Deering Reservoir. The parties agreed the level of assessment in the Town was 98.5% in tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence presented, the board finds the Taxpayers failed to prove the tax year 2010 assessment on the Property was disproportional. The appeal is therefore denied for the following reasons.

Assessments must be based on market value, as prescribed in RSA 75:1. Proportionality is determined by focusing on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003.); see also Appeal of Net Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). To prevail on this appeal, the Taxpayers had the burden of proving the market value of the Property, as of the assessment date, was below \$192,700 (\$189,800 assessed value divided by 98.5% level of assessment = \$192,700, rounded, indicated market value).

To determine whether the Taxpayers have met this burden of proof, 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, “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. at 68 ; see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The Taxpayers contend the 2010 assessment was disproportional because Driftwood Island assessments increased while those of other waterfront properties on the “mainland” did

not, but this is not necessarily probative of disproportionality. When the Town undertakes a statistical update, as it 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. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). Assessments are not intended to be fixed and unchanging but are instead subject to periodic revaluations, as frequently as annually but “at least as often as every fifth year,” and the Town selectmen have the responsibility to determine assessed values based on market data and other information. See RSA 74:1; RSA 75:1; and RSA 75:8-a.

There was no evidence presented that the Town assessed the Property in a manner different from other island properties. When a municipality uses a consistent methodology to value island or other properties, this is some evidence of proportionality. See Edie v. Town of Meredith, BTLA Docket No. 17987-98PT (May 11, 2000), citing Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Nor was the board persuaded that the differences between the increases in the assessments of island properties and other properties, including mainland waterfront properties, were not reflective of market value factors. It is not necessarily true that a comparable island property should be less valuable than a comparable “mainland” waterfront property because each may appeal to a different type of buyer or market segment. The board has addressed this issue in prior appeals.¹

The board took note of the Town’s evidence, which included the sale of the Property in September, 2009 for \$195,000. The Town’s assessor established this was an arm’s-length

¹ See, e.g., Singer v. Town of Rindge, BTLA Docket No. 13028-92 (1996): island properties tend to be unique, with “many benefits to the owners such as privacy, seclusion, views, etc. The detriments are obvious in that the island is not accessible by vehicle and not always by boat.” Further, “the board looks at the overall assessment and asks whether the assessment, regardless of how it was calculated, fairly valued the property.” Id.

transaction and stated her belief it was reflective of the market value of properties on this island. Evidence in support of the Town's position includes the Taxpayers' own testimony and the PA-34 form they signed under oath (Municipality Exhibit C), stating their belief "the selling price" was "fair market value." At the hearing, the Taxpayers noted the purchase price included personal property (a boat they valued at \$4,500), but stated they did not know the actual market value of the Property as of the assessment date and they presented no evidence to establish that value.

The board has the discretion to evaluate and determine the credibility of a sale price as being indicative of market value. See, e.g., Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); and Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). However, where it is demonstrated that the sale was an arm's-length transaction, the sale price is one of the "best indicators of the property's value." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988).

The Town's analysis (in Municipality Exhibit B) of three sales of waterfront property (on the mainland, one of which was 44 Zoski Road) indicates a value range from \$185,016 to \$220,614 which brackets the indicated market value of the assessment under appeal (\$192,700, rounded). 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 the proportional tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

For all of these reasons, the appeal for tax year 2010 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

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: Robert Searle and Helen Grembowicz, 67 Amherst Street, Milford, NH 03055, Taxpayers; Chairman, Board of Selectmen, Town of Deering, 762 Deering Center Road, Deering, NH 03244; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: January 14, 2013

Anne M. Stelmach, Clerk