

Donald Doe

v.

Town of Hebron

Docket No.: 26598-11PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2011 abated assessment of \$484,200 (land \$302,500; building \$181,700) on Map 7/Lot 48, 41 George Road, a single family home on 29.30 acres (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); and 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) he purchased the Property in March, 2010 for \$390,000 (after it was listed on a multiple listing service for \$419,000) and, while considered a “short sale,” this was the Property’s “fair

market value” because the sellers were “business people” (who did not have to sell at that time except for a price reflecting fair market value);

(2) the Property is in relatively poor condition, but “a lot of this” has already been ‘taken into account’ by the Town;

(3) the Town applied a view factor of \$200,000 to the land value but this is excessive in comparison to other properties, such as 35 High Cliffs Drive which has a “stunning view” both of the lake and the mountains (see Taxpayer Exhibit No. 3) and a \$275,000 view adjustment whereas the Property has a more limited view (see Taxpayer Exhibit No. 2) more similar to properties and the view adjustment should be \$125,000 to \$130,000;

(4) the view from the Property may be impacted in the future by the growth of trees on an adjacent property the Taxpayer does not own; and

(5) the assessment should be abated based on a market value finding of no more than \$400,000 adjusted by the level of assessment in the Town.

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

(1) the Taxpayer failed to submit market value evidence to support his conclusion that the Property was overassessed;

(2) the Taxpayer acquired the Property in March, 2010 through a short sale transaction, which the Town found was not “qualified” as a valid indicator of its market value;

(3) the Town performed an update in 2011 and established values throughout the Town, making consistent adjustments for views using an extraction method based on market sales information;

(4) the sales analysis in Municipality Exhibit D compares the Property to three other sales of properties with views and supports the proportionality of the assessment; and

(5) the Taxpayer did not meet his burden of proving disproportionality and the appeal should be denied.

The parties did not dispute the level of assessment in the Town was 105.1%, the median ratio calculated by the department of revenue administration.

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayer failed to meet his burden of proving the Property was disproportionately assessed in tax year 2011. The appeal is therefore denied for the following reasons.

To meet this burden of proof, the Taxpayer was obligated to establish that the market value of the Property in 2011 was materially less than the "equalized value" of the Town's assessment: \$460,700, rounded ($\$484,200 \div$ by 105.1% level of assessment). See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).

The Taxpayer focused his arguments at the hearing on the \$200,000 view adjustment to the land value shown on his assessment-record card ("ARC"), claiming this value was too high. The limited market value evidence he presented, however, for only two properties does not support this claim of disproportionality, especially in light of Town's own sales analysis discussed further below.

The Taxpayer relied first on the \$390,000 price he paid for the Property on March 30, 2010 after it had been listed for sale at \$419,000. He acknowledged this was a short sale (sold below the amount of the outstanding mortgage), but asserted the \$390,000 price was reflective of market value. As noted on the listing sheet (Municipality Exhibit C), the seller was "motivated" to sell and the sale was subject to "third party approval" (due to the seller's financial difficulties

with the lenders). In light of these atypical motivations, the Town did not consider the sale to be a “qualified” sale corroborative of market value. The board agrees.

The listing information describes the “expansive and pristine view of Newfound Lake” from the Property and this fact is also evident from the photographs submitted, including Municipality Exhibit B. In addition, the listing highlights the approximately “30 wooded acres” as an additional, value enhancing amenity of the Property. The board finds these and other features shown on the listing sheet supports the Town’s contention that, in all likelihood, the market value of the Property as of the assessment date (April 1, 2011, one year after this sale) was somewhat higher than either the listing or the purchase price. (The Taxpayer did not obtain an appraisal of the Property to ascertain its market value and did not obtain a mortgage to finance the purchase and therefore did not present any corroborative evidence of his own.)

The second property the Taxpayer focused on is 35 High Cliffs Circle, which sold as an undeveloped lot (consisting of 3.864 acres) on September 10, 2010 for \$260,000 in a “qualified” transaction. (See Taxpayer Exhibit No. 4.) After completion of construction of a house in 2012, the Town applied a \$275,000 view adjustment to take into account the “panoramic” view from 35 High Cliffs Circle. In his appeal document and at the hearing, the Taxpayer compared this adjustment to the \$200,000 applied to the Property for the “90+ Mtn/Lake Vu” stated on the ARC. The year at issue in this appeal is 2011, however, and the board finds the Town reasonably accounted for the differences in view in that year. While the Taxpayer is no doubt correct the quality and value of the new house and other improvements built at 35 High Cliffs Circle in 2012 is higher than the improvements on the Property (constructed in 1950), there is no evidence that would allow the board to conclude the market would value the view differences

between them (even in 2012, for that matter) for more than the \$75,000 reflected on the ARC's.¹

Unlike the Taxpayer, the Town did provide a sales analysis where it compared the equalized value of the assessment on the Property to three sales of properties in the Town with varying views that influence their values along with other differences. The Town applied varying view adjustments (assessed at \$50,000, \$250,000 and \$275,000, respectively) to these three sales because one had an inferior view and two had superior views when compared to the Property. This analysis is contained in Municipality Exhibit D, where the Town concludes these sales, adjusted for all material differences, including neighborhood, indicate the Property had a market value in the range of "\$489,840 to \$540,160" in 2011, somewhat above, not below, the equalized value noted above. It is well established that the proportionality of an assessment must be based on the value of the Property as a whole, not simply one element of the assessment such as the land value. See, e.g., Appeal of Walsh, 156 N.H. 347, 356 (2007).

The board could place no weight on the Taxpayer's assertion that the views from the Property were more similar to other properties in the Town with lower view adjustments and the view adjustment should therefore be reduced to the range of \$125,000 to \$130,000. He did not provide the ARCs or other information regarding these unidentified properties at the hearing and therefore the board could not make any meaningful evaluation of this unsupported assertion.² In addition, the board could give no weight to the Taxpayer's speculation the views from the

¹ Assuming, for the sake of argument only, that there might be a greater market value difference for view between the two properties, a supposition not established by the evidence presented in this appeal, it is just as likely that 35 High Cliffs Circle might be underassessed for its view as it is that the Property might be overassessed. See Appeal of Cannata, 129 N.H. 399, 401 (1987) (the underassessment of other properties does not prove the overassessment of the property under appeal).

² It is not uncommon for a taxpayer to question the process of making assessments based on views or other such amenities. The benchmark for determining whether these questions are valid in a tax appeal, however, is market value evidence. See, e.g., Elizabeth H. Breunig Trust v. Town of Randolph, BTLA Docket No. 25773-10PT (January 29, 2013) at pp. 4-5 (mere disagreement with assessor regarding "degree" or scope of views is insufficient to obtain a tax abatement without market value evidence to support the claim of disproportionality).

Property may at some time in the future be impacted by tree growth on an adjacent property.

From the photographs presented, it is evident such impact had not yet occurred as of the April 1, 2011 assessment date.

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 board finds the Taxpayer did not meet his burden of proving disproportionality in tax year 2011. The appeal is therefore 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, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Donald Doe, 53 West Street, Concord, NH 03301, Taxpayer; Chairman, Board of Selectmen, Town of Hebron, PO Box 188, Hebron, NH 03241; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 4/15/14

Anne M. Stelmach, Clerk