

Christopher and April Treat

v.

Town of Pittsfield

Docket No.: 26773-12PT

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Christopher and April Treat

v.

Town of Northwood

Docket No.: 26774-12PT

DECISION

The “Taxpayers” filed separate appeals, pursuant to RSA 76:16-a, in two municipalities to challenge a total assessment of \$401,600 on 8 Jenness Pond Road, a waterfront home on 3.29 acres (the “Property”), comprised of the following:

1.2 acres of land with a single family residence (Map R26, Lot 23) with an abated assessment of \$293,600 in the Town of Pittsfield (“Pittsfield”); and

2.09 acres of land with 195 feet of waterfront on Jenness Pond (Map 204, Lot 4) with an assessment of \$108,000 in the Town of Northwood (“Northwood”).

By agreement of the parties, the board consolidated these appeals for hearing and decision. For the reasons stated below, the appeals for abatement are denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments on the Property, adjusted by the respective levels of assessment, were disproportionately high or unlawful, resulting in the Taxpayers paying a disproportional 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). The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers, represented by Bruce C. Treat (“Mr. Treat”¹), the father of Christopher Treat, argued the total assessment was excessive because:

- (1) the Property was purchased for \$325,000 on September 13, 2012 “as a single entity” and should be assessed on that basis, even though part is located in Pittsfield and part is located in Northwood;
- (2) this \$325,000 sale price was the actual market value of the Property in tax year 2012 because price ‘always’ equals value;
- (3) “the [P]roperty is subject to three distinct, deeded easements . . . for the benefit of abutters and others” which “devalue” it (see Taxpayer Exhibit No. 4);
- (4) an August 17, 2012 appraisal performed by Elizabeth C. Murphy (the “Murphy Appraisal” in Taxpayer Exhibit No. 5) estimates the market value of the Property as of August 3, 2012 was \$337,000, but this was “conditioned” on (and subject to removal of) a negative encroachment (for dock and raft pictured in her appraisal) and she also noted the possible effect of the easements on “marketable title”; and

¹ In his testimony at the hearing, Mr. Treat acknowledged he has a financial interest in the Property because of a ‘second mortgage.’

(5) the total assessment should be abated based on a market value of \$325,000, adjusted by the respective levels of assessment and allocated “75% - 25%” between Pittsfield and Northwood (due to the relative amount of “services” provided by each municipality).

The municipalities argued the total assessment was proper because:

- (1) Pittsfield granted an abatement on the Property, reducing its assessment from \$321,700 to \$293,600 for tax year 2012;
- (2) each municipality considered all relevant factors affecting market value, including the sale price, easements and other issues emphasized by Mr. Treat, to arrive at a proportional assessment;
- (3) one sale does not necessarily establish market value and therefore undue reliance on the \$325,000 sale price in September, 2012 is not probative of disproportionality;
- (4) the Murphy Appraisal underestimates the market value of the Property because it does not make reasonable adjustments to Comparable #1 (34 Jenness Pond Road) to account for its age and other differences affecting value and, when these factors are considered and adjusted for, the range of indicated values is supportive of the assessments under appeal; and
- (5) the appeals should be denied.

The parties did not dispute the levels of assessment in Pittsfield and Northwood were 118.6% and 101.6%, respectively, the median ratios calculated by the department of revenue administration.

Board's Rulings

Based on the arguments and evidence presented, the board finds the Taxpayers failed to meet their burden of proving the total assessment on the Property was disproportional for tax year 2012. The appeals are therefore denied for the following reasons.

There is no dispute the Property is a “beautiful[,] custom built, four bedroom ranch” with many other positive features, including “190 feet of frontage, & a dock on beautiful Jenness Pond,” all as described in the listing agreement (in Municipality Exhibit A). As of the April 1, 2012 assessment date, the Property was on the market with an asking price of \$375,000. (Id.)

As noted above, part of the Property (1.2 acres of land with the single family residence) is located in Pittsfield and the other part (2.09 acres of land with 195 feet of waterfront on Jenness Pond) is located in Northwood. (See Taxpayer Exhibit No. 3.) The Murphy Appraisal (p. 10) presented by the Taxpayers considered the fact the Property is located in two municipalities and concluded it had no “adverse” impact on market value.

The parties do not dispute ad valorem assessments depend on market value and proportionality is determined by arriving at a reasonable estimate of market value adjusted by the level of assessment in each municipality. See RSA 75:1; and, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003).).

Mr. Treat’s main argument is that the Property, valued as a single entity,² had a market value in tax year 2012 equal to the \$325,000 sale price in September, 2012, six months after the assessment date. Even if the board were to accept, at face value, his argument that price ‘always’

² When property with a single highest and best use is located in more than one municipality, it is reasonable to value it as a single economic entity. Cf. Androscoggin Valley Country Club v. Town of Shelburne, BTLA Docket Nos. 22751-06PT/23420-07PT (May 26, 2009), pp. 4-5.

equals market value, the difference between this \$325,000 sale price and the equalized value of the total abated assessment (\$353,900) is \$28,900 -- less than 9% (actually "8.17%," as he himself calculated in Taxpayer Exhibit No. 1). If, instead of the sale price, the market value estimate in the Murphy Appraisal (\$337,000) is considered, then the difference drops to less than 5% ("4.78%" as also shown in Mr. Treat's calculations).

In relative terms and for the purpose of determining the proportionality of the total assessment, the board finds neither of these calculated differences is large enough to warrant an abatement. The courts have held 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). Consequently, the board finds the municipal assessors did not err in concluding, despite Mr. Treat's calculations, that the total assessment on the Property was proportional and reflected a reasonable measure of tax burden.

As noted above, Mr. Treat argued the sale price (\$325,000) is 'always' reflective of market value. The board does not agree. The board has the discretion to evaluate and determine the credibility of the sale price as an indication of market value. See 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). In arriving at a proportionate assessment, all relevant factors affecting market value must be considered, not just the sale price. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

It is not uncommon for properties to sell at a price either lower than or higher than a market value indication arrived at when an independent appraiser, using established professional

standards, evaluates comparable sales and market conditions and makes reasonable adjustments for differences. In this appeal, the only independent estimate of market value is the Murphy Appraisal, prepared for a lender (Merrimack County Savings Bank), not the Taxpayers. The Murphy Appraisal acknowledges the \$325,000 sale price, but estimates a market value that is \$12,000 higher. While Ms. Murphy considered the sale price as a possible value indication, she did not find it to be conclusive and therefore arrived at a higher market value estimate.

Turning to the evidence presented, the board finds the Murphy Appraisal, in all likelihood, understates (rather than overstates) the value of the Property in tax year 2012. Ms. Murphy did not attend the hearing to explain her choice of comparables or the adjustments she made to each of them to arrive at her final value conclusion. The photographs in the Murphy Appraisal and the listing information (in Municipality Exhibit A) show the Property was in very good condition: the exterior is attractive and the interior is modern with good quality finish materials. There is no evidence Ms. Murphy inspected the interiors of any of her three comparables (and no photographs of their interiors were submitted by Ms. Murphy or Mr. Treat, for that matter).

All three of the comparables she relied on³ were older than the Property. Comparable No. 1 (34 Jenness Pond Road), which Ms. Murphy gave the “most weight” in her appraisal, was significantly older (76 years compared to 14 years for the Property), but Ms. Murphy made no adjustment for age, even though it is one of the items in her sales grid. Adding just a \$7,500

³ Ms. Murphy gave a fourth comparable, located in a different municipality (the Town of Nottingham) on a different body of water (Pawtuckaway Lake), “little weight,” noting it “went to foreclosure” and was a “sale due to distress.” (Murphy Appraisal, p. 4.) She noted the “limited sales data on homes similar to the subject” and only one of her sales (Comparable No. 1) is located in Pittsfield. The other two (Comparable Nos. 2 and 3) are located in Epsom and Gilmanton on other bodies of water. (Id., p. 3.)

positive adjustment for age (approximately 2% of the sale price) increases Ms. Murphy's indicated value for this comparable to \$344,400.

There is also reason to question Ms. Murphy's conclusion that the "Quality of Construction" of Comparable No. 1 is the same ("Q3") as the Property.⁴ The evidence presented supports a finding its construction quality is inferior to the Property. Adding a conservative \$10,000 adjustment for this difference (approximately 3% of the sale price) increases its indicated value to \$354,400, above the equalized value of the total assessment (\$353,900).

In sum, and leaving aside all other questions impacting the credibility of the Murphy Appraisal, these two adjustments (totaling about 5%) place the indicated value of Comparable No. 1 (\$354,400) above the midpoint of the \$344,400 to \$358,000 value range of her other comparables. Consequently, the board finds the market evidence in the Murphy Appraisal is actually supportive of the proportionality (equalized value) of the total assessment on the Property.

The board considered all of Mr. Treat's other arguments and find they do not satisfy the Taxpayers' burden of proving disproportionality. For example, while Mr. Treat argued the dock "encroachment" impacted value, Ms. Murphy noted its existence and her value conclusion was "subject to removal of the unauthorized dock...." (Murphy Appraisal, p. 10.) The evidence

⁴ See Murphy Appraisal, pp. 3 and 26, where Ms. Murphy uniformly applies the "Q3" rating and states it is for "residences of higher quality" with "a design that includes significant exterior ornamentation" and "workmanship [that] exceeds acceptable standards" and "materials and finishes" that are "upgraded." Comparable No. 1, as shown on p. 16 of the Murphy Appraisal, does not meet this description and is clearly of a lower quality of construction than the Property. It is likely Comparable Nos. 2 and 3 are also of lower quality.

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presented at the hearing indicates removal occurred prior to the time of sale and Ms. Murphy's

"Appraisal Update" (id., p. 30) confirms this fact.

Insofar as Mr. Treat's arguments regarding the three deeded easements are concerned, the Murphy Appraisal issued in August, 2012 stated the "Title Company" may require their "removal" prior to the time of purchase. No evidence was presented at the hearing, however, to suggest, let alone establish, that the Taxpayers did not acquire "marketable title" (with the easements in place and a matter of record) sufficient to satisfy the title company when they purchased the Property and obtained a mortgage in September, 2012.

In the board's experience, easements allowing access to the waterfront and those that limit further development in some way⁵ are not uncommon, especially for properties situated on or near the waterfront, where access, usage and view issues take on importance. While easements of this type can enhance the values of properties benefitting from them, the Taxpayers did not meet their burden of proving the 'burden' of the easements resulted in a disproportional total assessment for the Property. In fact, Mr. Treat testified the easements were well known to all parties involved in the purchase, and therefore the board finds the sale price and the appraised value considered any impact the easements may have had on the Property at the time of sale.

Finally, the board considered Mr. Treat's arguments regarding how the total assessment should be allocated between Pittsfield and Northwood. The actual allocation of the total assessment (73% - 27%) is reasonably close to the "75% - 25%" apportionment percentages he contends should be applied based on the "services" provided to the Property by each municipality. Mr. Treat did not detail what these services were but, in any event, there is no

⁵ The board reviewed the three easements emphasized by Mr. Treat in Taxpayer Exhibit No. 4: "Easement #1" requires a referenced "beach" to be "left undisturbed in a natural state"; "Easement #2" regulates use of a right of way "for swimming and recreational activities"; and "Easement #3" precludes "more than one single family residence" on the Property. The board finds none of them impact the highest and best use of the Property as a single family, waterfront residence.

support for his contention that assessments should be allocated on this ground as a matter of law.⁶

For all of these reasons, the appeals are 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).

⁶ Assessments are not based on the quantity or quality of municipal services all or a part of a property may receive from a municipality. See, e.g., Antonucci v. Town of Litchfield, BTLA Docket No. 22519-06PT (May 7, 2009) at p. 4 (rejecting taxpayer argument that assessment should be abated because property did not receive certain municipal services, such as trash pick-up and sewer, and police services were “inadequate”), citing Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992).

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Chair

Albert F. Shamash, Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Bruce C. Treat, 3 Hop Kiln Road, Bow, NH 03304, representative for the Taxpayers; Chairman, Board of Selectmen, Town of Pittsfield, PO Box 98, Pittsfield, NH 03263; Chairman, Board of Selectmen, Town of Northwood, 818 First NH Turnpike, Northwood, NH 03261; Brett S. Purvis & Associates, Inc., c/o Allison Purvis, 1195 Acton Ridge Road, Acton, ME 04001; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: December 2, 2014

Anne M. Stelmach, Clerk