

Elaine N. Rogers

v.

City of Franklin

Docket No.: 27003-12PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2012 assessment of \$14,400 (land \$11,900; improvements \$2,500) on Map 077/Lot 406, Chance Pond Road, a 0.58 acre lot on Chance Pond (the “Water Lot”). The Taxpayer also owns, but did not appeal, Map 077/Lot 404, 302 Chance Pond Road, a 4.69 acre lot improved with a single-family residence (the “House Lot”), located directly across the road from the Water Lot, assessed at \$225,800. 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 on her entire estate in the Town (both the “Water Lot” and the “House Lot,” collectively the “Property”) 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 the Property was disproportionately assessed.

The Taxpayer, represented by her husband, Douglas A. Rogers, argued the assessment on the Water Lot was excessive because:

(1) the City's assessment-record card ("ARC") incorrectly describes this lot as "water front," but it is more accurately described as an embankment leading down to a "marsh" as shown by the photographs in Taxpayer Exhibit No. 1;

(2) the lot is "essentially worthless," evidenced by the fact the owners of several similar "marsh" lots deeded them to the City (for non-payment of real estate taxes) and the Taxpayer intends to deed the Water Lot to the City if an abatement is not granted;

(3) an abutting property (Map 77, Lot 404) with similar "marsh" frontage on Chance Pond has 5.0 acres assessed for \$1,500 and is described as "marsh/waste", which is evidence of disproportionality as the Property is significantly smaller but is assessed for more;

(4) the City is improperly assessing the Water Lot as if it were a "buildable lot"; and

(5) the assessed value of the Water Lot should be abated to either "zero" or at most "\$1,000."

The City, represented by J. Roy Smith with Corcoran Consulting Associates, Inc., contract assessor, argued the total assessment on the Property was proper because:

(1) the Taxpayer's entire estate (the Property) consists of two lots, the Water Lot and the House Lot, and the Taxpayer acquired both lots in one transaction with one deed in an arm's-length transaction for \$275,000 in August, 2011 (just seven months before the assessment date);

(2) the Property has a combined total assessment of \$240,200, which when equalized (by the level of assessment), implies a market value of \$202,200, significantly less than the purchase price;

(3) the “primary” notation on the ARC is not an indication the Water Lot is buildable and the City did not value it as such; and

(4) the appeal should be denied.

The parties do not dispute the level of assessment in the City for tax year 2012 was 118.8%, the median ratio as calculated by the department of revenue administration.

Board’s Rulings

Based on the evidence presented, the board finds the Taxpayer did not carry her burden of proving disproportionality. The appeal is denied for the following reasons.

To succeed on a tax abatement claim, the Taxpayer has the burden of proving by a preponderance of the evidence she is paying more than her proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). As the City argued and demonstrated in Municipality Exhibit A, the board must consider the Taxpayer’s entire estate (the Property as a whole, not just the Water Lot), to determine if an abatement is warranted. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985):

When a taxpayer challenges an assessment on a given parcel of land, the [BTLA] must consider assessments on any other of the taxpayer’s properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the [city].... When a taxpayer owns two parcels, then, a request for abatement on the first will always require consideration of the assessment on the second.

Accord, Appeal of City of Lebanon, 161 N.H. 463, 468 (2011). In making a decision on value, the board looks at the Property’s value as a whole because this is how the market determines value.¹ Consequently, the board cannot consider the assessed value of the Water Lot in isolation.

¹ See also Appeal of Walsh, 156 N.H. 347, 356 (2007) (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).

Further, proportionality depends on establishing the market value of the Property and adjusting it by the level of assessment in the City. See RSA 75:1; and Porter, 150 N.H. at 368. Thus, as the City correctly pointed out at the hearing, the Taxpayer had the burden of proving the market value of the Property was less than \$202,200, rounded (\$240,200 total assessed value / 118.8% level of assessment); the board finds she did not satisfy this burden.

As noted above, the Water Lot is located on Chance Pond directly across Chance Pond Road from the House Lot and both lots (the Property) were purchased by the Taxpayer in August, 2011 for \$275,000 in one transaction with one deed. The photographs in Taxpayer Exhibit No. 1 show the home on the House Lot is within site of the Water Lot and Chance Pond; the board finds this proximity and visibility enhances the value of the House Lot and the Property as a whole.

The board heard extensive testimony and arguments from Mr. Rogers regarding the purchase of the Property by his wife, the Taxpayer. He stated his belief she paid more than market value for the Property. Prior to the purchase, the Property was listed for sale for \$295,000; the seller was relocating and was constructing another residence; Mr. & Mrs. Rogers had sold a previous home in another state and needed to relocate in a short period of time (or else place their furnishings in storage); and various “toys” (a tractor and other personal property) were included in the \$275,000 purchase price.

The board has the discretion to evaluate and determine the credibility of the sales price as an indication of market value. See Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994); Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). 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 City gave some consideration to the August, 2011 \$275,000 purchase price for the Property, but in fact assessed the Property for much less than this value: as noted in Municipality Exhibit A, the equalized value of the tax year 2012 assessment on the Property (\$202,200, rounded) is about \$73,000 below the \$275,000 purchase price. Thus, even if, for the sake of argument, the City and the board were to agree the Taxpayer ‘overpaid’ for the Property by some amount, there is no evidence to support a finding the extent of overpayment (leaving aside the alleged but unquantified value of any personal property included with the sale) could account for as large a differential as 26% or more ($\$73,000 / \$275,000 = 26.5\%$). Because this range is sufficiently wide,² the board finds it further supports the City’s analysis and conclusion (in Municipality Exhibit A) that the Property was not disproportionately assessed in tax year 2012.

This finding makes it unnecessary to dwell in great detail on the Taxpayer’s arguments regarding the value of the Water Lot in isolation and her comparisons to several other such lots, several of which may have been ‘deeded back’ to the City for unpaid taxes.³ The Taxpayer also emphasized the relatively poor quality of the water body (Chance Pond), its lack of depth and the slope of the embankment that restricts the development potential of the Water Lot and the board considered each of these issues in evaluating the proportionality of the assessment on the Property.

² 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).

³ To the extent those lots, unlike the Water Lot, are not owned by taxpayers who also have adjacent developed or developable house lots that benefit from them, they are not comparable; consequently, a simple comparison of their assessments with the assessment on the Water Lot is not probative of disproportionality.

The City's contract assessor testified the assessment on the Property as a whole would likely be much higher if the Water Lot was directly on a more attractive and desirable water body than Chance Pond and there is no dispute regarding this testimony. The board recognizes the Water Lot provides access to navigable water (notwithstanding the Taxpayer's characterization of Chance Pond as simply a "marsh" or a "swamp" for at least parts of the year), which is significantly different than direct access to a river, a lake or the ocean for that matter. Nonetheless, using its judgment and experience, the board finds the market would recognize the Water Lot is an amenity of the Property, not a detriment, and contributes some value to the House Lot and the Property as a whole. The water frontage allows for a well-constructed dock and access to a recreational water body that is, at a minimum, suitable for canoeing and kayaking (as evident from the photograph in Municipality Exhibit A). The board is therefore unable to agree with the Taxpayer's contention that the assessed value of the Water Lot should either be "zero" or at most "\$1,000."

In summary, the board finds the Taxpayer did not meet her burden of proving the total assessment of \$240,200 for the Property (which includes the \$14,400 assessment on the Water Lot) resulted in disproportionality. The appeal for a tax abatement in tax year 2012 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

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: Douglas A. Rogers, 302 Chance Pond Road, Franklin, NH 03235, representative for the Taxpayer; City of Franklin Assessing Department, 316 Central Street, Franklin, NH 03235; and Corcoran Consulting Associates, Inc., Bayside Village, PO Box 1175, Wolfeboro Falls, NH 03896, Contracted Assessing Firm.

Date: 01/12/15

Anne M. Stelmach, Clerk