

**Jebb Road Real Estate Trust**

**v.**

**Town of Merrimack**

**Docket No.: 27068-12PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2012 assessment of \$232,800 (land \$199,100; building \$33,700) on Map 6A-2/Lot 170, located at 15 Jebb Road, a single family, camp style residence on 0.132 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); 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property flooded two times (once in 2006 and once in 2007) as depicted on the photograph in the packet marked as Taxpayer Exhibit No. 1; this packet also includes pages 5, 9, 17, 18 and 19 from the “Brown Report” prepared for the 2011 tax appeal (Docket No. 26521-

11PT), various assessment-record cards and a January 2014 comparative market analysis

(“CMA”) prepared by Buddy Pope, Realtor of Bean Group (the “Pope CMA”) with a

recommended “starting” list price of \$150,000;

(2) a February 3, 2014 CMA prepared by Debra Beaudry of Suburban Realty, Inc. (the “Beaudry

CMA”) recommended a listing price for the Property in the range of \$140,600 to \$155,400

(Taxpayer Exhibit No. 2);

(3) a January 21, 2014 CMA prepared by Dan Kazakis of The Newell Real Estate Agency LLC

(the “Kazakis CMA”) recommended a list price of \$169,900 (Taxpayer Ex. No. 3);

(4) all of the CMAs took into consideration the seasonal nature and the effect of the flooding on

the Property, including the damaged furnace, non-potable water, shallow well and cesspool;

(5) 14 Jebb Road, located across the street from the Property, is a non-buildable lot with

wetlands that run-off onto the Property and damaged the retaining wall as shown on Taxpayer

Exhibit No. 4;

(6) the assessment should be more comparable to 11 Jebb Road which, although it has less land

and a shared access, has an updated septic system compared to the Property’s cesspool and

proximity to the water and impact of flooding; and

(7) the assessed value should be abated to \$177,000.

The Town argued the assessment was proper because:

(1) the Pope CMA is not credible and utilizes sales dating back to 1999, short sales, non-

waterfront sales and it is unknown how Mr. Pope arrived at any value based on the information provided;

(2) the Beaudry CMA is not an appraisal and the analysis relied on two sales, one of which is a non-waterfront property;

(3) the Kazakis CMA utilizes four listings and two sales located on Franklin Pierce Lake (in Antrim and Hillsboro) and, lacking adjustments, the analysis provides no indication of market value of the Property;

(4) there were two major flooding events in New Hampshire in the 2006/2007 timeframe, one known as the “Mother’s Day Flood,” which is not the norm for the Property and not the norm in the Town of Merrimack;

(5) 14 Jebb Road is a small (0.2-acre) lot across the street which is unbuildable and 11 Jebb Road has a limited amount of waterfrontage which is encumbered with rights-of-ways to many other properties and is sandwiched by docks and boats and neither of these properties are comparable;

(6) the Town performed a comparable sales report (Municipality Exhibit A) utilizing four sales, and after adjustments were made for differences between the Property and the sales, arrived at an indicated range of market value of \$202,960 to \$244,790 and found comparable #1 located at 20 Lakeside Drive (the only sale in Merrimack) to be the best indication of value at \$244,790 as adjusted; and

(7) the assessment, when equalized, indicates a market value of approximately \$224,000 which is supportive of the Town’s analysis and the Brown Report.

The parties did not dispute the level of assessment was 103.9% for tax year 2012, the median ratio calculated by the department of revenue administration.

Because both parties discussed the June 27, 2014 Brown Report which was prepared following the February 19, 2014 hearing of the 2011 tax year appeal (Docket No. 26521-11PT) for this Property, it was agreed by the parties to this proceeding that a complete copy of the Report would be marked as Board Exhibit A.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the Property was disproportionally assessed in tax year 2012. The appeal is therefore denied for the following reasons.

Assessments must be based on market value adjusted by the level of assessment in the municipality. RSA 75:1. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). To prevail in this appeal, the Taxpayer had the burden of proving the Property had a market value less than \$224,100 (rounded) as of the April 1, 2012 assessment date ( $\$232,800 \div 1.039$ ).

Arriving at a proportional assessment is a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979).

This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

The Taxpayer presented the Pope CMA (included in Taxpayer Exhibit No. 1) with a recommended "list price" of \$150,000 based on an "average sales price from the properties I have chosen is  $\$884,200/6 = \$147,366$ " (unnumbered p. 4 of Pope CMA). The Town argued it was unknown as to how Mr. Pope arrived at any value based on the information provided.

Although the board notes, as it did in its 2011 Decision, the Town utilized two of the same comparables as Mr. Pope (12 Lakeview and 124 Baboosic Lake), Mr. Pope made no adjustments (as the Town did) to account for any differences between the Property and the comparables.

Further, the Brown Report (pp. 17-19) discussed the sales in the Pope CMA and found many were not comparable and some were year-round residences which would require significant

adjustments to arrive at a credible indication of market value of the Property. The board concurs with the Town that the Pope CMA failed to provide credible evidence of the Property's market value.

The February 3, 2014 Beaudry CMA (Taxpayer Exhibit No. 2) recommended a listing price for the Property ranging from \$140,600 to \$155,400 based on two sales, one of which (4 Richards Road) is a non-waterfront property. The board concurs with the Town that this is not an appraisal and lacks any substantive information for the board to rely on. Specifically, on unnumbered page 4 titled "CMA Summary," Ms. Beaudry does not even indicate the number of bedrooms, bathrooms, finished area or finished square footage for her to compare to the "Sold" properties. In fact, nowhere in the CMA is there a full description of the Property which would include the size of the lot, the road and water frontage, square footage of the camp, etc. Thus, the board finds the Beaudry CMA is woefully inadequate to support any finding of market value for the Property.

The Taxpayer also submitted the January 21, 2014 Kazakis CMA (Taxpayer Exhibit No. 3) with a recommended list price of \$169,900. Mr. Kazakis "[ran] 2 different cmas" to arrive at a range of \$155,000 to \$166,000. In the first "cma," he utilized three list prices of property on the market and in the second, he utilized one list price and two sales located on Franklin Pierce Lake (in Antrim and Hillsboro). In neither scenario were adjustments made for camp size, lot size, location, water body, water frontage, topography among other necessary adjustments. In his email to "Don," he states "[t]he lot size, camp square footage, lack of a full bath, furnace issue and summer traffic on both sides of the property were all taken into careful consideration." However, the CMA provides no indication of his "consideration" and how his estimates relate to

the market value of the Property. Therefore, the board cannot give any weight to the Kazakis CMA in arriving at its Decision.

The Town analyzed four waterfront sales to arrive at its conclusion the Property is fairly and equitably assessed (see Municipality Exhibit A). The Town made adjustments to the sales to account for differences in time, amount of waterfrontage, topography, size, quality and condition among other differences. The Town arrived at an indicated range of market values of \$202,960 to \$244,790. Ms. Brown reviewed the comparable sales used by the Town and addressed her findings in the Brown Report. (See Board Exhibit A, p. 19.)

The board has also considered the evidence presented by the Taxpayer regarding the flooding, run-off and other issues affecting the value of the Property and finds the Town adequately addressed these issues through testimony at the hearing and through its adjustments in its sales comparison analysis.

Based on the evidence presented by the Town, the board finds the equalized assessment of \$224,000 ( $\$232,800 \text{ assessment} \div 1.039 \text{ equalization ratio}$ ) is a reasonable indication of the Property's market value as of April 1, 2012. Further, the board finds the Brown Report's market value of \$223,000 is supportive of the equalized assessment. Based on a thorough review of the evidence and arguments presented, and utilizing its judgment and experience, the board finds the Taxpayer failed to prove the assessment of \$232,800 was disproportional for tax year 2012. 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

---

Theresa M. Walker, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jebb Road Real Estate Trust, David A. & Donald W. Roberts, 6 Moore Street, Wilmington, MA 01887, Taxpayer; Chairman, Board of Selectmen, Town of Merrimack, 6 Baboosic Lake Road, Merrimack, NH 03054; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 5/13/15

---

Anne M. Stelmach, Clerk