

Gustave and Irene Ruth

v.

Town of Winchester

Docket No.: 27291-13PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2013 assessment of \$316,219 (land \$48,119; building \$268,100) on Map 15/Lot 15, 130 Watson Road, a single-family residence on 12.0 acres (the “Property”). The Taxpayers also own, but are not appealing, Map 15/Lot 15-1, a 106.000 acre lot assessed for \$2,996 and Map 15/Lot 1, a 123.85 acre lot assessed for \$7,398.¹ 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. We find the Taxpayers failed to prove disproportionality.

¹ The two unappealed lots are both in current use and the parties did not dispute the proportionality of their current use assessments.

The Taxpayers argued the assessment was excessive because:

- (1) the Town's assignment of "AVG+30" for the quality of the home is excessive as the house has two bedrooms and one bathroom that do not have heat, only a sub-floor in one of the bedrooms and the kitchen has laminate countertops and some of the finish work on the trim is not complete and an "AVG+10" rating is more appropriate;
- (2) before subdividing the Property, the 2009 assessed value was \$336,465 and, after the subdivision, the assessment should be \$251,465 (including reducing the value by \$20,000 as the Town has done for the "failed roof");
- (3) the road frontage is on a Town maintained road of which 50% is a single lane and not up to Class V standards;
- (4) the assessment is excessive when compared to four comparable sales (see Taxpayer Exhibit No. 2) of properties assessed similarly to the Property;
- (5) the Town's sales are not comparable and occurred after the date of assessment and the Town applied different adjustments to the sales after it reduced the Property's assessment by \$20,000;
- (6) applying a square foot building cost of \$80 (instead of the Town's assessment of \$90 per square foot) for the Property arrives at a building value of \$230,266; adding the features of \$28,000 and a land value of \$48,119 indicates a value for the Property of \$306,385; subtracting the "temporary abatement" for the roof of \$20,000 leaves an abated value of \$286,385; and
- (7) if the Taxpayers had to sell the Property in April, 2013, they would have put it on the market for \$300,000 in its entirety (including the land in current use).

The Town argued the assessment was proper because:

- (1) the Town performed an update in 2010 and is in the process of a revaluation for 2015;

(2) during the mediation process, the Town met with the Taxpayers for one-half day and discussed, among other things, issues regarding the map and lot numbers of the Taxpayers' properties and after viewing the exterior of the Property determined a temporary depreciation of 7% (\$20,000) was appropriate as a cost-to-cure as the roof shingles are in need of replacement;

(3) the Taxpayers' comparables are not indicative of the market value of the Property as they consisted of a pre-foreclosure (2009) sale (540 Warwick Road), a sale which would require significant adjustments for its age, inferior quality, less acreage and close proximity to a noisy racetrack (951 Old Westport Road), and non-verified sales which were not considered comparable (56 Ashuelot Street and 153 Back Ashuelot Road) and the Taxpayers made no adjustments to account for any differences between the sales and the Property;

(4) the Taxpayers selected comparable sales based upon the similarity of the assessment value to the Property's assessed value, and it would have been proper to select comparable properties with physical similarities to the Property;

(5) four comparable properties were analyzed which support the proportionality of the assessment (Municipality Exhibit A); and

(6) the assessment is fair and equitable and the appeal should be denied.

The parties agreed the level of assessment was 111.2% for the 2013 tax year, as calculated by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed and the appeal, therefore, is denied.

The Taxpayers spent a considerable amount of time at the hearing discussing the disagreement between the Town and the Taxpayers as to the "correct" map and lot numbers.

The board finds this is immaterial as the address, acreage and buildings on the lot under appeal is not contested; therefore, the board need not address any issue regarding a sub-lot number.

Further, the Taxpayers only appealed the 130 Watson Road Property and also discussed in detail changes that occurred as a result of a subdivision of their lots prior to the date of assessment and values placed on their total lot as it existed and was assessed in tax year 2009. The board cannot address the 2009 tax year as its authority in this appeal is the value of the 130 Watson Road Property as of April 1, 2013. Further, the assessment of a property which has changed or been subdivided four years prior is of no relevance to the assessment under appeal. Additionally, no evidence was submitted to support any change to the number of acreages in “farmland,” “wetlands” and “managed hardwood” and therefore the board makes no findings in this regard.

“In an abatement case, the taxpayer has the burden of proving by a preponderance of the evidence that the property at issue was assessed disproportionately to other property in the Town.” Appeal of Sokolow, 137 N.H. 642, 643 (1993). To succeed on a tax abatement claim, the Taxpayers have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003). This burden can be carried by establishing that the Taxpayers’ Property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the municipality. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

The agency’s experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33, VI; Appeal of City of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Further, although the right to an abatement and the board’s powers in these proceedings are dictated by statute, the

statutory authority contained in RSA 76:16-a to “make such order thereon as justice requires” confers broad discretion and equitable powers to abate taxes. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003).

However, with respect to the value of the appealed Property as a whole, the board finds the Taxpayers failed to carry their burden in proving disproportionality. As stated above, this burden can be established by providing evidence that the Property was disproportionately assessed in relation to its market value. The Taxpayers did not submit an appraisal or other credible evidence to establish a market value of the Property. In fact, the Taxpayers arrived at four different indications of value of the Property for tax year 2013. First, in their appeal document, the Taxpayers indicated the market value of the Property was \$258,000. Second, based on analyzing the 2009 value after subdivision and reducing the value by \$20,000 for the “failed roof,” they arrive at a value of \$251,465. Third, by reducing the buildings base rate of \$90 per square foot to \$80 per square foot, adding the features and land value and subtracting the \$20,000 for the “temporary abatement” for the roof indicates a value of \$286,385. Fourth, the Taxpayers stated if they were to sell the Property in its entirety in April, 2013, they would have set the asking price at \$300,000.

The Taxpayers argued the home’s quality of “AVG+30” should be “AVG+10”, and the Town arbitrarily increased the quality rating in order to capture the value of the current use land. This argument lacks any credibility as the quality of a home is based on many factors (i.e., quality of construction, types of finishes, etc.) but is not based in any way on the land in current use.

The Taxpayers submitted several comparable sales, but selected the sales based on assessments similar to the assessed value of the Property. This argument is without merit and is

somewhat illogical as the Taxpayers brought this appeal because they disagreed with that assessed value. In fact, the proper way to analyze whether the assessment was disproportionate would be to find properties with physical similarities to the Property and then make adjustments for any differences.

Arriving at a proper assessment is not an exact science, but a process requiring use of informed judgment and experienced opinion. See, e.g., Brickman v. City of Manchester, 119 N.H. 919, 921 (1979) (use of judgment in selecting valuation methodology and assumptions). 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).

Based on the evidence submitted, the board finds the Taxpayers have not carried their burden. Additionally, the board finds the sales' analysis submitted by the Town provides some support for the proportionality of the assessment. (See Municipality Exhibit A.) For all these reasons, the appeal 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

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: Gustave and Irene Ruth, 130 Watson Road, Winchester, NH 03470, Taxpayers; Chairman, Board of Selectmen, Town of Winchester, 1 Richmond Road, Winchester, NH 03470; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 10/28/15

Anne M. Stelmach, Clerk