

Horace and Emily Poynter Trusts

v.

Town of Durham

Docket No. 5436-88

DECISION

A hearing in this appeal was held, as scheduled, on June 29, 1990. The Taxpayers were represented by Malcolm W. Sandberg, son-in-law. The Town was represented by David W. Bolton, appraiser for M.M.C., Inc..

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$340,770 (land, \$196,370; buildings, \$144,400) placed on their real estate, located on Langley Road for the 1988 tax year. The property consists of a dwelling and out buildings situated on 40 acres of land 38 of which are assessed in current use and 2 acres assessed at market value.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Durham.

Mr. Sandberg argued the 2 acres not in current use were overassessed due to the Town assigning a "waterfront" condition factor to the houselot area. He argued that house is within 200 feet from and easily accessed from Langley Road while Oyster River is approximately 650 feet from the house and is accessed through the fields, orchard and woods in current use. He testified that it would not be possible to create a house lot of 2 acres that had frontage on both Langley Road and Oyster River and have it conform to the Durham zoning ordinance.

Mr. Sandberg submitted copies of 29 assessment cards and 18 photos to demonstrate the inconsistency of M.M.C.'s application of the influence and condition factors.

Based on his comparisons and the location of the 2 acres not in current use, Mr. Sandberg argued that the assessment on the houselot should be lowered

by dropping the influence factor from 130 to 125 and the condition factor from 200 to 120.

Mr. Bolton argued that the assessment of the 2 acres not in current use must be viewed in the context of the entire property of the Taxpayer which does front on Oyster River.

Mr. Bolton submitted the tax map of the Oyster River - Great Bay area and testified that the influence factors were assigned for general neighborhoods largely influenced by access to deep water and that the condition factors were property specific for such features as view, topography, accessibility, etc.

The Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of

Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The basic issue before the Board is should the portion of land not placed in current use be assessed as if it is a legally separate lot in total isolation or separation from the balance of the tract or should it be assessed as an integral part of the entire tract with a contributory value to the entire estate.

The Board rules the later is the correct method of determining the correct assessment. The Courts have long held that in determining whether an abatement is warranted or not the entire estate of the Taxpayer within the taxing jurisdiction must be considered. While the appraisal process may approach the total assessment in a fragmented fashion, the Taxpayer must show that the total assessment, not just one of its components, is excessive or disproportionate. See Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205 (1899); Bemis & C. Bag Co. v. Claremont, 98 N.H. 446, 449 (1954); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Likewise when appraising one of the Taxpayer's components, in this case the land not in current use, it must be done with the consideration for what effect the entire tract has on the housesite area.

The Board finds the 1988 equalization ratio as determined by the Department of Revenue Administration for the Town of Durham is 100%. Based on the Taxpayers testimony, the Board finds the 2 acres not in current use enjoys a good view including a partial view of the water. Further, the Board finds that the housesite has reasonable, while not highly developed, access to Oyster River at its mouth into Great Bay. The Board rules that whatever negative effect the distance of the buildings from the water may have is offset by the view from the site.

Given the ratio of 100% for 1988, the issue of disproportionality needs to be made in relation to full market value as of April 1, 1988, not just to the relationship to the assessments of other properties in the area as it is possible on an individual basis for those properties to be either under or over assessed in relation to market value. The question remaining then is what is a

reasonable estimate of the market value of the 2 acres in question with all

its features (e.g. view, distance from water, access to Oyster River, etc) as part of the entire tract. The Board rules that, based on comparable sales information submitted by both the Town and Taxpayer, the non current use value of the land and buildings of \$332,500 (assessment exclusive of current use value) reasonably reflects the market value of the homesite with water access and view.

The Board therefore rules the Taxpayers have failed to prove that the total assessment of \$340,770 is unfair, improper, or inequitable or that it represents a tax in excess of the Taxpayers' just share of the common tax burden. The ruling is, therefore: Request for abatement denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Member

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: July 26, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Horace & Emily Poynter, taxpayer; and Chairman, Board of Selectmen of Durham.

Michele E. LeBrun, Clerk

Date: July 26, 1990

0009