

**Donahue Realty Trust**

**v.**

**Town of Greenland**

**Docket No. 5467-88**

**DECISION**

The Taxpayer appeals, pursuant to RSA 76:16-a, the Town's 1988 assessment of \$3,231,500 (land, \$556,200; buildings, \$2,675,300) on its real estate consisting of a manufacturing building, office building and warehouse on 24.84 acres assessed from Ocean Ave. in Portsmouth. The property is used to manufacture and sell presite built houses under the business name of New England Homes. For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry its burden and prove any disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the parcel was only accessed by a 50 foot right-of-way from Ocean Ave. and the buildings were over 400 feet back from Ocean Ave.;

2) the approximately 1/2 acre open wetland and the covered culverted stream interfered with full utilization of the improved site;

3) the office building's third floor was unfinished and the second floor partially finished; and

4) the Town's replacement cost on the industrial building and office building exceeded the actual costs to construct.

The Town, at hearing, recommended adjustments to both the land and building components of the assessment with the net recommended assessment being

\$77,000 higher. The Town recommended reducing the land to recognize the access,

locational and utility aspects of the site, while increasing the building value, due to correcting the size of the mezzanine, and adding a value for the unfinished warehouse that had been omitted.

The Town submitted the assessment cards of five comparable properties and argued the properties were consistently appraised and the sale of one of them supported the Taxpayer's assessment. The Town noted that several presite built model homes were located on the property, but that the Town had not assessed them.

We find the Taxpayer failed to prove its assessment was disproportional. The Taxpayer did not submit any probative market or cost evidence to support its claim of overassessment. The Taxpayer's claim that the buildings were built for less than the Town's figures is given little weight as the taxpayer acted as its own general contractor and did not prove the Town's figures were above the market norm for constructing such buildings.

We also find the Town generally supported the property's assessment and accounted for the unfinished portions of the office building.

In determining whether a taxpayer is disproportionately assessed or not, the Board must consider all real estate owned by a taxpayer within a taxing jurisdiction, not only that which was assessed or appealed.

. . . 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 town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

In this case, the Town conceded and the Board agrees that some adjustment to the assessment to account for the access, wetland, and the property's distance from the road is necessary. However, on the other hand, the Town had understated substantially the size of the mezzanine and entirely omitted a

partially built warehouse. Such errors and omissions must be considered and weighed by the board in determining the Taxpayer's equitable share of the common tax burden.

However erroneous, in law or in fact, the assessment may be, the appeal being an equitable proceeding, and the appellant, seeking equity, being required to do equity, only so much of his tax is abated as in equity he ought not to pay. Edes v. Boardman, 58, N.H. 580, 586 (1879).

In this case the Board rules no abatement is justified as any overassessment on the land component is offset by the underassessment of the mezzanine and warehouse. See Id.

Further tipping the scale to the Town's favor are the four model presite built houses, located on the site, that were not assessed in 1988. These buildings were placed on concrete piers, connected to electricity (but not water or sewer) and were used as display models.

The Board rules that these presite built housing units assembled and located on piers are taxable real estate. RSA 72:6 states that all real estate is taxable except as otherwise provided. RSA 21:21 II states "manufactured housing as defined by RSA 674:31 shall be included in the term 'real estate'."

RSA 674:31 reads:

As used in this subdivision, "manufactured housing" means any structure, transportable in one or more sections, which, in the traveling mode, is 8 body feet or more in width and 40 body feet or more in length, or when erected on site, is 320 square feet or more, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to required utilities, which include plumbing, heating and electrical heating systems contained therein. Manufactured housing as defined in this section shall not include presite built housing as defined in RSA 674:31-a. (emphasis added)

RSA 674:31-a reads:

**Presite Built Housing.** As used in this subdivision, "presite built housing" means any structure designed primarily for residential occupancy which is wholly or in substantial part made, fabricated, formed or assembled in off-site manufacturing facilities in conformance with the United States Department of Housing and Urban Development minimum property standards and local building codes, for installation, or assembly and installation, on the building site. For the purpose of this subdivision, presite built housing shall not include manufactured

housing, as defined in RSA 674:31.

The legislature saw fit in RSA 72:7-a I to exempt from taxation manufactured housing held as "stock in trade"; however, it did not extend that provision to presite built housing.

**RSA 72:7-a**

I. Manufactured housing suitable for use for domestic, commercial or industrial purposes is taxable in the town in which it is located on April 1 in any year if it was brought into the state on or before April 1 and remains here after June 15 in any year; except that manufactured housing as determined by the commissioner of revenue administration, registered in this state for touring or pleasure and not remaining in any one town, city or unincorporated place for more than 45 days, except for storage only, shall be exempt from taxation. This paragraph shall not apply to manufactured housing held for sale or storage by an agent or dealer. (emphasis added)

The legislature has in RSA 205-A and 384:16-d, for purposes of regulating manufactured housing parks and lending practices, expanded the definition of manufactured housing to include presite built housing. Consequently, the board must infer that the legislature was purposeful in the reference to the narrower definition in RSA 674-31 for real estate and taxing purposes.

So that the Board's order is clear, the Board is not ordering that the Taxpayers assessment be increased in 1988 for all the omitted or understated components of its property. It is ruling that these underassessed components at the very least offset any other overassessment so as to result in the Taxpayer failing in its burden of proving its total real estate was disproportionately assessed.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

Date: August 6, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Daniel J. Donahue, Trustee, representative for Donahue Realty Trust, taxpayer; the Chairman, Selectmen of Greenland; and Scott Bartlett, Appraiser for M.M.C., Inc.

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Brenda L. Tibbetts, Clerk

Date: August 6, 1991

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