

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 and

1990 assessments of:

Map & Lot #LandBuildingTotal Assessment

12/49\$ 81,700\$ 81,700
12/50\$ 76,100\$ 76,100
12/51\$ 6,300\$ 6,300
12/84\$113,900\$205,400\$319,300
12/85\$ 55,900\$ 55,900
12/86\$ 83,000\$ 83,000
12/117\$240,000\$ 30,600\$270,600

1989 assessments of:

Map & Lot #LandBuildingTotal Assessment

12/15\$148,000\$141,500\$289,500
12/116\$233,600\$378,700\$612,300
17/116\$140,500\$128,200\$268,700

and 1990 assessment of:

Map & Lot #LandBuildingTotal Assessment

12/15, 12/116\$485,000\$648,400\$1,133,400
and 17/116

(the Property). For the reasons stated below, the appeal for abatement is granted as to lots 12/51 and 12/117 and denied as to all other lots.

The Taxpayer has the burden of showing the assessments were 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).

The Taxpayer argued the assessments were excessive because:

Map 12/Lot 49

This 10-acre lot fronts on Route 111 and access from 111 is almost impossible.

The topography at the road's edge drops considerably and a curb cut may not be permitted.

Map 12/Lot 50

This 8.5-acre lot is very much the same as and abuts Map 12 Lot 49. There is no clear distinction between the lots. It suffers from extreme topography and has a wet condition resulting from the topography and runoff. There is a small unpaved access to the lot.

Map 12/Lot 51

This 2.5-acre lot lacks frontage and has rolling topography with some wet areas. Its only access is through abutting properties of common ownership.

Map 12/Lot 84

This lot fronts on and has access from Emerson Avenue. It is improved with a six year old single family residence and has fairly level topography. The Town has applied a 1.20 quality index to the residence which is too high because the house is not above average.

Map 12/Lot 15

This lot fronts on Emerson Avenue and is improved with what was once a gift

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 3

shop and later a residence. The building has functional limitations because of its long and narrow shape. There has never been a tenant for more than one or two months. The lot was purchased with 12/116 and 17/116 by a single deed.

Map 12/Lot 116

This lot fronts Emerson Avenue and is improved with the Little Mexico Restaurant which was built and occupied by the owners. The lot was purchased with 12/15 and 17/116 by a single deed.

Map 17/Lot 116

This lot is on the corner of Emerson Avenue and Route 111 and is improved with a pizza shop, an older metal and block building, with a 52.5 percent unfinished portion (garage) not occupied. The lot was purchased with 12/15 and 12/116 by a single deed.

Map 12/Lot 85

This 5.06-acre lot is zoned residential, has frontage on Emerson Avenue and was purchased with Map 12 Lot 86 which is an adjacent lot.

Map 12/Lot 86

This 3.55 acre lot is zoned residential, has frontage on Emerson Avenue and was purchased with Map 12 Lot 85 which is an adjacent lot.

Map 12/Lot 117

This 21.48 acre lot is partially zoned commercial and partially residential. There are two small outbuildings on the property used for storage. The lot

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 4

has extreme topography along the frontage. The majority of the lot is zoned residential but the Town has treated it as commercial.

The Taxpayer argued that based on RSA 75:9 lots 12/49, 12/50, 12/51, and 12/84 should be considered as a single parcel because they were purchased by common deed, and there is a question as to whether they would be developable separately because of the wetlands. Further, lots 12/85, 12/86, 12/117, 12/15, 12/116 and 17/116 were purchased because the Taxpayer wished to own the entire corner and should be assessed as a single parcel because the lots have been purchased for assemblage. Therefore, the Property, according to the Taxpayer, should be assessed as two single parcels with one value for the first acre and a supplemental or residual value for the remainder. The remaining land on Map 12 Lot 117 should be assessed at \$5,000 per acre for that portion in the commercial zone and \$2,000 per acre for that portion in the residential zone.

The Taxpayer asserted the proper assessments should be as follows:

Lots 12/15, 12/116, 12/117, 12/85, 12/86, 17/116
Land - \$276,700; Buildings - \$617,900; Total - \$894,600

Lots 12/84, 12/49, 12/50, 12/51
Land - \$166,400; Buildings - \$155,400; Total - \$321,800

for a total assessment of the entire property of \$1,216,400.

The Town argued the assessments were proper because:

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 5

(1) From 1989 through the middle of 1990, the Taxpayer had separate, saleable properties.

(2) In 1991, the Planning Board approved combining lots 12/15, 12/116 and 17/116. The 1991 assessment on these lots decreased only slightly - the site factor on the property was increased by three for the three buildings and the excess frontage factor was eliminated.

(3) Lot 12/86 has additional frontage and is subdividable.

(4) Lots 12/49 and 12/50 both have useable access off Route 111 although no driveway has been constructed. The topography is noted on the assessment card as gently sloping.

(5) Lot 12/51 is entirely back land and was appraised at \$2,500 per acre. All excess land, whether landlocked or not, is treated as back land. The lot does deserve a 50 percent adjustment for shape because it is long and narrow and has little utility.

(6) An appraisal of the Property prepared for the Taxpayer (for mortgage purposes, Bank of New England) by Crafts Appraisal Associates on November 30, 1990, which does not include lot 12/84, when adjusted for time supports the assessment.

(7) In 1989, Lot 12/117 may have been overassessed. It is more than likely that the only part of the lot that could easily be developed would be 250 feet along Route 111 and any further development would have to be approved by the

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 6

Zoning Board. The two metal outbuildings were classified as warehousing and more appropriately should have been assessed a minimum value of \$10,000 in review.

(8) Three comparable sales submitted indicate that the assessment of Lot 12/84 is in line with comparables in the Town.

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 7

Board's Findings & Rulings

The board is faced with two general issues as argued by the parties:

- (I) should the lots be assessed as ten separate estates or two estates; and
- (II) what is the proper valuation.

(I) Should the lots be assessed as separable estates or two estates

RSA 75:9 provides: "Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory." Under this provision, two or more tracts having the same owner must be appraised and described separately if they "do not adjoin" or if they "are situated so as to become separate estates." Whether two or more adjoining tracts "are situated so as to become separate estates" is a matter to be determined from all the facts and circumstances of each case. 3 T. Colley, Law of Taxation Section 1068 (4th ed. 1924); Annot., 133 A.L.R. 524, 538 (1941). "There is no hard and fast rule that can be applied universally to guide assessors in determining whether parcels of land are to be assessed separately or together....[N]o single factor is decisive of the issue." Lenox v. Oglesby, 311 Mass. 269, 271, 41 N.E.2d 45, 46-47 (1942). Fearon v. Town of Amherst, 116 N.H. 392, 393, 394 (1976).

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 8

In this case, the board must weigh and balance the facts on this issue.

On the Taxpayer's side, it is clearly the intent of the Taxpayer to consider lots 12/49, 12/50, 12/51 and 12/84 as one estate and lots 12/85, 12/86, 12/117, 12/15, 12/116 and 17/116 as one estate. Lots 12/49, 12/50 and 12/51 were deeded together; lots 12/15 and 12/117 were deeded together; and lots 12/85 and 12/86 were deeded together.

On the Town's side, the lots were separate lots of record and could be transferred separately from 1989 through the middle of 1990. The Planning Board approved combining lots 12/15, 12/116 and 17/116 in 1991 and the Town has assessed them as one lot for 1990 (the Taxpayer plan was drawn in March, 1990).

In response to a question from the board, the Taxpayer indicated that many ventures had been undertaken on the lots, from ice cream shops to arcades, and that it was the Taxpayer's understanding that any lot could be sold at any time. Although the Taxpayer argued that lots 12/85, 12/86, 12/117, 12/15, 12/116 and 17/116 should be combined for assessment purposes, a question exists as to why the Taxpayer only applied for Planning Board approval to combine lots 12/15, 12/116 and 17/116.

The board must look at the highest and best use of the Property at the time of the assessment. The Taxpayer testified that the lots were valid separate lots of record. If the Taxpayer desired, any one or all of the lots

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 9

could be sold without Planning Board approval. It was clearly the intent of the Taxpayer at the time of the tax years under appeal to retain these lots as separate estates. The board rules that these lots are so situated as to become separate estates in the context of RSA 75:9 and thus should be appraised as separate estates with the exception of lot 12/15, 12/116 and 17/116 for the 1990 tax year.

(II) What is the proper valuation

"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.R. v. State, 75 N.H. 513; 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. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. A November, 1990 appraisal prepared for the Taxpayer was submitted by

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 10

the Town and dismissed by the Taxpayer as having no probative value. We find the Taxpayer failed to prove that the 1989 assessments of lots 12/15, 12/116, 17/116, the 1989 and 1990 assessments on lots 12/49, 12/50, 12/84, 12/85, 12/86 and the 1990 assessments of 12/15, 12/116, 17/116 were disproportional.

Based on the evidence, the board finds that the 1989 and 1990 assessments on lot 12/51 were overassessed and warrants a 50 percent reduction for its shape and limited utility. The board also finds that the 1989 and 1990 assessments on lot 12/117 were excessive. Without Planning Board approval, it is doubtful that any more than 250 feet along Route 111 could be developed, and a total minimum value of \$10,000 is found for the two metal outbuildings. The board rules the proper 1989 and 1990 assessments for lots 12/51 and 12/117 are as follows:

Lot 12/51 - Land, 2.5A x \$2,500 x 50% = **\$3,125**

Lot 12/117 - 1A at \$87,500
20.48A x \$2,500 x .90 = \$46,100
450.00 FF x 208 x 1.10 x .10 = \$10,300
Two metal outbuildings = \$10,000
Land, \$143,900; Buildings, \$10,000; Total, \$153,900

If the taxes have been paid, the amount paid on the values in excess of \$3,125 for lot 12/51 (1989 and 1990) and \$153,900 for lot 12/117 (1989 and 1990) shall be refunded with interest at six percent per annum from date paid to refund date. RSA 75:17-a.

SO ORDERED.

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 11

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 12

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur Richter, Representative for the Taxpayer; and Chairman, Selectmen of Hampstead.

Dated: April 11, 1993

Valerie B. Lanigan, Clerk

0008

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 13

R & S Realty Trust

v.

Town of Hampstead

Docket No.: 7189-89

ORDER

R & S Realty Trust

v.

Town of Hampstead

Docket Nos.: 7189-89 and 9454-90

Page 14

This order relates to the Town's request for clarification of the board's decision dated April 11, 1993. Specifically, the Town questioned whether the board intended to value Map 12, Lot 117 as residential despite the current commercial zoning along route 111.

In revisiting this issue, the board reviewed its notes and the tape recording of the hearing along with the exhibits presented by both parties. The Town's representative, Gary Roberge, testified that the lot was overassessed. The testimony was that lot 117 had both residential and commercial frontage. In response to a question posed by Chairman Twigg as to what the valuation would be if the Town was given a chance to correct the record, Mr. Roberge responded that there would be approximately a \$96,000 reduction in the assessed value which he arrived at by converting the excess land to residential (\$2,500 an acre instead of \$5,000 an acre) and reducing the frontage by \$50,000.

The board found that based on all of the evidence presented, that a 1.0 acre land value for lot 117 of \$87,500 and a unit price of \$2,500 for the excess land of 20.48A was proper.

SO ORDERED.

R & S Realty Trust

v.

Town of Hampstead

Docket No.: 7189-89

Page 15

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Arthur Richter, Representative for the Taxpayer; and Chairman, Selectmen of Hampstead.

Dated:
0008

Valerie B. Lanigan, Clerk