

Taylor Real Estate Trust

v.

Town of Holderness

Docket Nos.: 8593-90 and 12130-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$1,353,223 (land, \$1,099,423 buildings, \$253,800); and the "Town's" 1991 assessment of \$1,351,423 (land, \$1,099,423; buildings, \$252,000) on Map 3, Lot 101 (the Property). For the reasons stated below, the appeal for abatement is granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the current use and non-current use land was not properly identified and assessed;
- (2) a right of way benefitting an abutter was fully assessed to the Taxpayer;
- (3) the area in current use identified by a survey of December 1991 requested by the selectmen shows more land in current use than that assessed by the Town for both

years; and

(4) the current use land should be classified in the category of "all other forest types" rather than in "white pine".

The Town argued the assessments were proper because:

(1) as of April 1, 1990, the current use land was described by a map presented to the selectmen (TN Exhibit B);

(2) the Bemis plan, showing the current use status argued by the Taxpayer, was not available to the Town until after the 1990 and 1991 tax years were past; after it was submitted to the Town, the assessment was corrected for the 1992 tax year;

(3) the Taxpayer's recommended adjustment for the two rear sites does not consider the site's view potential and water access;

(4) sales of comparable properties with smaller sites support the Town's site assessments; and

(5) rights-of-way, such as the one to the abutting the Windwood property, were not uncommon for Squam Lake property.

Board's Rulings

Based on the evidence, the board finds there are three general issues in this case:

(1) what was the proper description of the Property on which to base the current use and ad valorem assessments for 1990 and 1991;

(2) what are the proper assessments for the three sites around the cottages and the other land not in current use; and

(3) what is the proper category and assessment rate per acre for the land in current use.

Proper Land Description

The board finds that the Bemis survey, submitted to the selectmen in

December of 1991, forms the proper basis for determining the land in current use and the land not in current use.

Given the conflicting evidence and procedures, the route to the finding is not a simple and unequivocal one. In this case it appears, as it is in many current use cases, the original records relating to the area placed in current use are incomplete and vague. Following the reassessment the Taxpayer requested an abatement from the selectmen and in that process attempted to further quantify the area not in current use. It appears, from both the memorandum that the Taxpayer supplied the selectmen with on December 18, 1991 (exhibit TP #5) and a copy of the selectmens' meeting of May 18, 1992 (exhibit TP #4), that the parties' were attempting to arrive at what was a reasonable definition of the land by having the Property surveyed and the non-current use land delineated. While not entirely clear, it appears from the reading of those two documents that the selectmen were requesting this information of the Taxpayer and the Taxpayer ultimately provided that information in the form of the Bemis survey. RSA 75:1 in part requires that the selectmen shall receive any evidence that may be submitted to them relative to assessing a property. In this case, the Taxpayers had appealed both the 1990 and 1991 assessments, and were apparently, as part of the abatement process, attempting to better define and delineate the land. It is reasonable for the Bemis survey which is their most definitive mapping of the parcel, to be the basis for the 1990 and 1991 assessments.

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While this process may have taken several years during the abatement process, it was necessary for both the Town and the Taxpayer to correct the incomplete current use map and records. The board views this administrative updating differently from the tax year constraints imposed by RSA 76:14 on the selectmen for corrections of omissions or improper assessments.

Ad Valorem Site Values

Based on the area delineated in the Bemis survey, the board finds that a one acre site should be assessed around the Grey Birches Cottage. The resulting land value for that site is \$200,000 resulting from a condition factor of .50 which recognizes the distance from the waterfront and the limited utility of the waterfront in that area.

A one acre site should be assessed around the Rest-a-While cottage with a land value of \$120,000 resulting from a condition factor of .30 due to its secluded site, distance from the water and its limited view of the lake.

A .45 acre site should be assessed around the Boulder Oaks cottage with an assessment of \$280,000 reflecting a condition factor of 1 but a reduced unit price of \$280,000 for the .45 acre site.

No additional frontage assessment should be included because the Town's methodology inherently assumes 150 feet of water frontage with each site. The balance of the water frontage qualifies for current use, even the area where the map

indicates there is a boat launching, due to its very limited and minimal usage not being incompatible with current use qualifications.

The balance of the 1.16 acres not in current use, which includes the internal roads and a small area around the barn, should have an assessment of \$44,550, resulting from a unit price of \$40,000, a factor of .8 and a condition factor of 1.2 which recognizes the encumbrance of the right-of-way to the Windwood property.

Current Use Category and Rate

The board finds that the Taxpayer did not present, either to the Town or to the board, adequate evidence on which to quantify the forest types as to location and acreage. The Taxpayer did submit some forestry reports that indicate forestry practices and cuttings; however, such reports fall short of the requirement of the application procedures in the current use rules REV. 1202, which require the applicant to show the acreages of the land and the forest type categories for which the Taxpayer is requesting current use assessment. Therefore, the board finds that the rate of \$61. per acre, for the 46.39 acres in current use, was not shown to be unreasonable or incorrect.

Conclusion

In summary the land value should be calculated as follows:

<u>Property Description</u>	<u># of units</u>	<u>unit price</u>	<u>factor</u>	<u>condition</u>	<u>land value</u>
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Grey Birches site	1 acre	\$400,000	1.00	.50	\$200,000
Rest-A-While site	1 acre	\$400,000	1.00	.30	\$120,000
Boulder Oaks site	.45 acre	\$280,000	1.00	1.00	\$280,000
Balance of land not in current use	1.16 acre	\$ 40,000	.8	1.20	\$ 44,550
Land in current use	46.39 acre	\$ 61	_____	_____	\$ 2,830
Total Land Value					\$647,380

The board notes that the building assessment was \$1,800 less in 1991 than in 1990, apparently for an adjustment for the value on the tennis court and a fence. However, there was no testimony or evidence presented as to whether the 1991 value was appropriate for the 1990 tax year. Lacking any such evidence, the board orders the building assessments to be as they were assessed for the respective years.

Therefore, the board rules the proper assessment for 1990 to be \$901,180 (land, \$647,380, buildings, \$253,800), and the assessment for 1991 to be \$899,380 (land, \$647,380, buildings, \$252,000).

If the taxes have been paid, the amount paid on the value in excess of \$901,180 for 1990 and \$899,380 for 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also

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refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nathaniel H. Malcolm and Theodore Taylor, Trustees for Taylor Real Estate Trust, Taxpayer; and the Chairman, Selectmen of Holderness.

Dated: December 2, 1993

Valerie B. Lanigan, Clerk

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