

Brookwood Park Shores, Inc.

v.

Town of Barrington

Docket No.: 12893-92PT

ORDER

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments, totalling \$297,900, on eleven vacant lots (the Properties) as follows. Note: The Town already adjusted some of the assessments.

Lot Number	Assessment
42	\$ 68,200
44	\$ 27,600
60	\$ 8,900
61	\$ 17,500
62	\$ 6,800
63	\$ 2,400
64	\$ 5,300
65	\$ 13,800
66	\$ 60,300
67	\$ 35,500
68	\$ 51,600

For the reasons stated below, the board orders the Town to reassess the

Properties as three lots -- lot 63, lot 64 and the remainder as one lot.

Page 2

Brookwood Park Shores, Inc. v. Town of Barrington

Docket No.: 12893-92PT

The Taxpayer argued the assessments were excessive because:

- (1) the parcels are remnants of a 1965 plan;
- (2) the waterfront lot (10A-67) could not be built upon due to its shallow depth and topography;
- (3) lots 10-60, 10-63 and 10-64 are also too small to be built upon;
- (4) Holiday Lake Shore Drive is a private gravel road that does not meet town road standards;
- (5) the remaining larger parcels could be developed off Hall Road and France Road but would have to meet the Residential-Agricultural Zone requirements of 200 feet of frontage and 2 acres, and the number of potential lots would be limited to 2 or 3 due to the poor topography;
- (6) land accessed by Holiday Lake Shore Drive cannot receive a building permit due to the inadequacy of the road; and,
- (7) the market value of the land in 1992 was \$135,000.

The Town argued the assessments were proper because:

- (1) the reports submitted by the Taxpayer were preliminary, incomplete, unsupported and did not prove disproportionality;
- (2) based on the Town's subdivision regulations, all contiguous vacant nonconforming lots were assessed as one lot;
- (3) many of the lots were grandfathered and could receive variances to allow building;
- (4) the lots were comparably assessed with other individually owned lots at Brookwood Park Shores; and

(5) two sales of small waterfront lots on Mendum Pond for \$33,000 and \$35,000 supported the assessed value of lot 67 for \$35,500.

Page 3

Brookwood Park Shores, Inc. v. Town of Barrington

Docket No.: 12893-92PT

Board's Rulings

Based on the evidence, the board orders the Town to reassess the Properties as encompassing only three lots: lot 63, lot 64 and then the remainder of the land. As explained below, the contiguous land should be assessed as one lot, resulting in lots 42, 44, 60, 61, 62, 65, 66, 67 and 68 being assessed as one lot. Lots 63 and 64 are not contiguous to any of the Taxpayer's other land, and therefore, those lots must be assessed as separate lots.

The first step in valuing any property is determining what property is being appraised. Here, the question is what lots were separate lots that could have been legally conveyed and what lots could not have been separately conveyed because of Town regulations and state statutes. Simply put, if a lot cannot legally be separately sold, it cannot be assessed as a separate legal lot.

Determining which lots could have been separately sold requires reviewing:

- 1) the status of the subdivision plan marked as "Municipality A" (the Plan);
- 2) determining the status of the "roads" shown on the Plan; and
- 3) determining the status of the lots shown on the Plan, including an analysis, under the zoning ordinance, of what happens when lots are nonconforming.

The Plan, dated 1965, was recorded at the registry of deeds June 14, 1966. (The board's paralegal obtained the recording date from the registry.)

The Plan, therefore, was recorded before the Town adopted zoning (1972) and before the Town adopted subdivision regulations (sometime after 1972). Pursuant to the Plan, the Taxpayer's predecessor cleared some of the land, constructed

Page 4

Brookwood Park Shores, Inc. v. Town of Barrington
Docket No.: 12893-92PT

some of the roads shown on the Plan, and conveyed a few of the lots within the subdivision. The lots conveyed out are shown on exhibit 2 of the Taxpayer's memorandum.

While the Plan shows several roads that appear to make the Taxpayer's lots nonabutting, those roads are actually additional land that is generally owned in fee by the Taxpayer subject to the easements for other lots. The original Plan shows approximately 209 lots (not including lot 10-42) even the Town admitted the number of legal lots was substantially less. The Town, pursuant to the zoning ordinance, combined nonconforming adjacent lots and concluded that there were 11 lots (not including lot 70). The Town was correct in merging the nonconforming lots, but the Town's analysis did not go far enough because they viewed the roads as not being owned in fee by the Taxpayer. What follows is the board's analysis of the number of lots.

The roads shown on the Plan have not been accepted by the Town as town roads, and therefore, the roads remain private rights-of-way. Under New Hampshire law, conveyances along rights-of-way that are shown on plans convey the land in the right-of-way up to the center of the road. Gagnon v. Moreau, 107 N.H. 507, 509 (1967). Thus, the Taxpayer continued to own, in fee, all of

the roads to the extent the Taxpayer owned the abutting land on both sides of the road. This fee ownership was, however, subject to the easement rights that were created in the lots that had been sold. The roads that abut land that had been conveyed on both sides to someone other than the Taxpayer or its predecessor are now owned in fee by the abutting property owners subject to the easement rights of both the Taxpayer and other owners in the subdivision.

Page 5

Brookwood Park Shores, Inc. v. Town of Barrington
Docket No.: 12893-92PT

We also note that the Taxpayer's fee ownership is not subject to easements held by the other land still owned by the Taxpayer because one cannot have an easement over one's own land. Hayes v. Moreau, 104 N.H. 124, 125 (1962).

When one views the Properties, including lot 10-42, under the above analysis, the Taxpayer is the fee owner of all of the land in the subdivision except: 1) for those lots that have been conveyed out; and 2) for those portions of a road that are abutted by lots that have been sold out on both sides. Attached to this order is a shaded copy of a plan showing the Taxpayer's ownership as compared to the ownership of others. The attached plan shows that all of the Properties abut other Taxpayer land except lots 63 and 64.

Under the Town zoning ordinance the following definitions are applicable to our discussion.

Lot of Record: A lot which is part of a subdivision approved by the Barrington Planning Board, recorded in the Strafford County Registry of Deeds and exempt from subsequent changes in subdivision regulations or zoning ordinances pursuant to RSA 674:39, as amended, and/or a lot or parcel described by metes and bounds in a deed duly recorded prior to enactment of the Barrington Zoning Ordinance. Zoning ordinance definitions, 25, page 4 (March 12, 1991).

Nonconforming Lot: A lot which was lawfully created but which does not conform to the minimum area or dimensional requirements specified for the zone in which it is located.

These definitions demonstrate the lots on the Plan are not "lots of record" because: 1) the lots were not part of a subdivision that was approved by the Barrington planning board; and 2) the lots were not lots that had been described by metes and bounds in a deed duly recorded before the enactment of the zoning ordinance. The entire parcel, including lot 42, is a "lot of record"

Page 6

Brookwood Park Shores, Inc. v. Town of Barrington
Docket No.: 12893-92PT

because that area was described by metes and bounds in a deed recorded before the enactment of the zoning ordinance. The deed is exhibit 1 of the Taxpayer's memorandum.

The minimum lot size in the Properties' zone is 80,000 square feet with a minimum frontage of 200 feet. The lots on the Plan do not meet these dimensional requirements, and thus are "nonconforming lots" under the zoning ordinance.

Article 11.3 of the zoning ordinance provides as follows.
If two (2) or more unimproved, nonconforming lots that are adjacent or with contiguous frontage are in single ownership and are recorded at the time of passage of amendment of this ordinance, the lots involved shall be considered to be an undivided parcel for the purposes of this ordinance.

Based on article 11.3 and the definition of a "lot of record" (property described by metes and bounds and recorded at the registry before zoning), the individual lots, except for lots 63 and 64, on the Plan have all merged into one lot of record. Lots 63 and 64 are not adjacent to another Taxpayer lot

and do not have contiguous frontage with another Taxpayer lot. Thus, lots 63 and 64 must be assessed as separate lots, and the remainder of the Properties must be assessed as one lot.

Given the board's conclusion concerning the number of lots involved, the Town shall reassess the Properties in accordance with this order and shall file, within thirty (30) days of the clerk's date below, revised assessments on the three lots. The Town shall provide the Taxpayer's attorney with a copy of the revised assessments. The Taxpayer may file, within ten (10) days of receipt of the Town's submission, a response to the Town's submission, but the Taxpayer may not submit any new information. For example, the Taxpayer may not provide new

Page 7

Brookwood Park Shores, Inc. v. Town of Barrington

Docket No.: 12893-92PT

market value information. Rather, the board will review the Town's revised assessments given the evidence that has already been received.

Upon receipt of the parties' submissions, the board will issue a final decision that will include the board's rulings on the Taxpayer's request for findings of fact and rulings of law. The board encourages the parties to communicate with each other in hopes of resolving this matter without further board involvement. If the parties are able to settle this matter in accordance with this order, the parties shall so inform the board, and the board will take no further action.

Rehearing and Appeal Procedure

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed 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(e). 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.

Page 8

Brookwood Park Shores, Inc. v. Town of Barrington

Docket No.: 12893-92PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Colliander, Esq., Counsel for Brookwood Park Shores, Inc., Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Dated: December 14, 1995

Valerie B. Lanigan, Clerk

0006

Brookwood Park Shores, Inc.

v.

Town of Barrington

Docket No.: 12893-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessments, totalling \$297,900, on eleven vacant lots (the Properties) as follows. Note: The Town already adjusted some of the assessments.

Lot Number	Assessment
42	\$ 68,200
44	\$ 27,600
60	\$ 8,900
61	\$ 17,500
62	\$ 6,800
63	\$ 2,400
64	\$ 5,300
65	\$ 13,800
66	\$ 60,300
67	\$ 35,500
68	\$ 51,600

The board issued an order dated December 14, 1995 (Order) which ordered the Town to reassess the Properties as three lots: lot 63, lot 64 and the remainder as one lot. This decision deals with the assessment of those three lots and whether the Town's revised assessments are proper. The Town's revised assessments are: lot 42 - \$195,400, lot 63 - \$2,400 and lot 64 - \$5,300.

Board's Rulings

We find the proper assessments to be as follows: lot 42 - \$183,100, lot 63 - \$2,400 and lot 64 - \$5,300. These assessments are ordered for the following reasons.

Lot 42

In the Order, we found that all the formerly separately assessed lots except for lots 63 and 64 are legally one lot and should be assessed as one. The Town, however, in its revised assessment continued to treat the road frontages as if they were part of separate lots by not using an excess frontage adjustment based on the total road frontages. We have adjusted the revised assessment by properly applying an excess frontage adjustment of .54 for the total road frontage of Francis Rd. and Hall Rd. The board finds this is consistent in viewing this land as one lot.

The board finds the Town's assessment for the water frontage of \$35,500 is reasonable. The Taxpayer argued that the Town through its land calculations was in essence subdividing the lot. The board finds that is a misrepresentation of the assessment process. The water frontage as assessed by the Town represents the waterfront's contributory value to this lot as a whole. While the water

frontage area may be questionable for building if viewed in isolation from the balance of lot 42, its value is reasonable when considered as a waterfront access component for the 118 acres of lot 42.

Lot 63 and Lot 64

We find the Town's assessments are reasonable and involve adjustments for the size, shape and questionable buildability of the lots. We found in the Order that these two lots are not contiguous to the other land of the Taxpayer and should be assessed as separate lots. We find the Town's methodology to be reasonable and that the Taxpayer did not present any compelling market evidence that the resulting values are excessive.

Therefore, the board rules that the proper total assessment of the three lots is \$190,800.

If the taxes have been paid, the amount paid on the value in excess of \$190,800 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1993, 1994 and 1995. 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.

Taxpayer's Requests

The board responds to the Taxpayer's request for finding of fact and ruling of law as follows.

In these responses, "neither granted nor denied" generally means one of the following:

a. the request contained multiple requests for which a consistent response could not be given;

b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or

d. the request was irrelevant.

Findings of Fact

- 1) Granted.
- 2) Granted.
- 3) Granted.
- 4) Granted.
- 5) Granted.
- 6) Neither granted nor denied.
- 7) Granted.

Rulings of Law

- 1) Denied. Lots 63 and 64 are created by the plan.
- 2) Denied.
- 3) Denied. Lots 63 and 64 are created by the plan.
- 4) Denied. Lots 63 and 64 are created by the plan.
- 5) Neither granted nor denied.
- 6) Granted.
- 7) Neither granted nor denied.
- 8) Neither granted nor denied.

Page 5

Brookwood Park Shores, Inc. v. Town of Barrington
Docket No.: 12893-92PT

- 9) Neither granted nor denied.
- 10) Neither granted nor denied.
- 11) Denied.
- 12) Neither granted nor denied.
- 13) Granted.
- 14) Denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Colliander, Esq., Counsel for Brookwood Park Shores, Inc., Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: February 22, 1996

Valerie B. Lanigan, Clerk

0006