

Squamscott Scullers Ltd.

v.

Town of Stratham

Docket No.: 15080-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$78,300 (land \$67,500; buildings \$10,800) on a 2 to 3-acre parcel on the Squamscott River improved with a garage/storage building and a dock (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 was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the land value is excessive and should be assessed at approximately

\$30,000;

(2) the Property's right-of-way access may be restricted for more intensive uses and for power due to the indefinite nature of the easement in the deed;

(3) the 150-foot setback requirements on three sides of the Property for being in a shoreline protection district and the power-line easement at the rear of the lot reduce the buildable area to a small triangular envelope; and
Page 2

Squamscott Scullers Ltd. v. Town of Amherst
Docket No.: 15080-94PT

(4) the Property is not directly accessed by a Town road and there is a question whether further building would be allowed by the Town pursuant to RSA 674:41.

The Town argued the assessment was proper because:

(1) the highest and best use may be as a camp lot or a single family residential building lot with some special exceptions;

(2) the existing building while classified as a garage appears to have been originally a camp with some storage area;

(3) there appears to be a sufficient amount of land to install a septic system and well;

(4) a nearby residential subdivision recently had a lot sell with frontage on Squamscott River for \$110,000; the approximately \$50,000 differential between a fully accessible residential lot and the Property adequately addresses the difference in the utility of the two properties; and

(5) nearby camp lots are similarly assessed.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$60,300 (land \$49,500; buildings \$10,800).

This Property is indeed a difficult one to value due to its unique

features and the lack of any comparable market data. While all assessments must be based on market value (RSA 75:1), where direct market data does not exist for a certain property, the reasonableness of the assessment compared to other assessments and the comparison to general market evidence provide some indication of proportionate assessment.

First, the board finds the highest and best use of this Property is as a seasonal camp property with no certain potential for electric utilities.

Page 3
Squamscott Scullers Ltd. v. Town of Amherst
Docket No.: 15080-94PT

In arriving at this conclusion, the board considered the positive and negative aspects of the Property presented by the parties. The negative factors noted were:

- 1) access via a narrow right-of-way for a distance of approximately 1,600 feet;
- 2) very questionable ability to have power and telephone utilities placed along that easement due to the subservient properties' desire not to have those utilities placed in the generally defined right of way;
- 3) limited building potential on the lot due to the shoreline protection setbacks and the lack of electric utilities; and
- 4) limited recreational amenities of the river due to the shallow draft at low tide and the boat height restriction of the railroad bridge where the river enters Great Bay.

The positive attributes of the Property were noted as being:

- 1) a very private, scenic camp setting; and
- 2) providing access to the Squamscott River for some recreational and boating purposes.

The only market evidence submitted was of the sale of an adjoining lot with riverfront on Squamscott River and access on a Town-approved road, which sold for \$110,000 in 1995. The Town argued that the approximately \$50,000 differential was adequate to account for the Property's seasonal access, lack of utilities and limited development potential. The Town had arrived at the Property's lot value by reducing the condition factor by 50% from a fully accessible year-round property with riverfront access. Further, the Town submitted assessment-record cards of two other parcels just beyond the Property, which also had right-of-way access and no utilities, and argued that the adjustments on those properties and values were consistent with the Taxpayer's assessment. The Taxpayer argued that such differential was not adequate and that the Property had a lot value of approximately \$30,000.

Page 4
Squamscott Scullers Ltd. v. Town of Amherst
Docket No.: 15080-94PT

The board finds the condition factor should be reduced to 1.10 to more properly reflect the unique limitations of this Property relative to fully accessible riverfront properties. As already stated, while there is no market data to directly draw this conclusion from, the board has relied on its experience in two fashions to arrive at this conclusion. First, the board is aware from its general knowledge of the market that riverfront, seasonal camps with a value similar to the Town's assessment generally have more accessibility and/or utilities to be able to support such a value. While

location and type of river are both obvious factors that play in such value conclusions, the board concludes that any individual with \$80,000 to spend for such a camp would have more desirable properties from which to choose than the Taxpayer's Property.

Second, in viewing the Property relative to its bundle of rights compared to the other two properties just down river from the Taxpayer, the board concludes that the Property has more rights than the vacant lot (Lot 11) but perhaps fewer rights than Lot 12, which has a more developed and occupied camp built on it. While the Taxpayer is correct that there is no empirical data to support these assessments, lacking such market evidence, the board must ensure the resulting assessment is both reasonable (as addressed in the previous paragraph) and proportional (as this comparison attempts to do).

The board finds the Taxpayer's estimate of \$30,000 was strictly an opinion of the landowner and was not derived by any comparison to other properties. The board finds the Property has enough positive attributes (privacy, aesthetics, river access) that it would be attractive to a reasonable number of people as a waterfront camp lot with minimal utilities.

If the taxes have been paid, the amount paid on the value in excess of \$60,300 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

Page 5
Squamscott Scullers Ltd. v. Town of Amherst
Docket No.: 15080-94PT

shall also refund any overpayment for 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.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Daniel W. Jones, Esq., Counsel for Squamscott Scullers Ltd., Taxpayer; and Chairman, Selectmen of Stratham.

Date: December 24, 1996

Valerie B. Lanigan, Clerk

0006