

Priscilla C. Currier

v.

Town of Pelham

Docket No.: 15370-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$242,640 (land \$157,800; buildings \$84,840) on an 89.5-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, two other lots in the Town with a combined, \$83,600 assessment. 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 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. We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Town failed to consider the reclamation of the gravel pit (cost approximately \$145,000);

(2) some wet areas (due to streams) along the frontage may inhibit development;

(3) the power-line easement negatively impacts the amount of frontage available for subdivision;

(4) the wooded area at the rear has significant wetlands that may not support septic systems;

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(5) the Town's sales #12 - #24 should not be considered due to the single-lot nature of those sales;

(6) the Town's sales #1 - #11 have various problems, including size, financing, subdivisions in place and dates of sales; and

(7) based on an appraisal the Property was worth \$250,000.

The Town argued the appeal should be denied because:

(1) based on sales of lots, subdivided parcels and raw land, the assessment was not excessive (the Town submitted a report of these sales);

(2) the Taxpayer did not show her nonappealed properties were properly assessed; and

(3) the Taxpayer failed to perform a subdivision analysis, and thus, the appraisal was unreliable.

After the hearing, the board viewed the Property, the Taxpayer's two nonappealed properties and the Town's comparable #1. The board walked a substantial portion of the Property, including the entire frontage, the side boundaries, some of the wooded and wet sections, and the gravel pit.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not prove the Property was overassessed.

To be entitled to an abatement, a taxpayer who owns multiple properties in a town must show: 1) the appealed property was overassessed; and 2) the nonappealed properties were properly assessed or at least not underassessed. See Appeal of Town of Sunapee, 126 N.H. 214, 277 (1985) (board must consider whether the taxpayer's entire estate was disproportionately assessed). Here, the Taxpayer failed to meet either one of these burdens.

The Property's equalized value was \$393,750 (\$240,190 assessment ÷ .61 equalization ratio). Therefore, to show overassessment the Taxpayer was required to show that the Property was worth less than \$395,000 (rounded). The Taxpayer did not prove this.

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The Taxpayer had two main arguments: 1) the Town's assessment failed to consider the reclamation costs for the gravel pit; and 2) the Taxpayer's appraiser, Mr. Bramley, estimated a \$250,000 market value.

Concerning the Taxpayer's first argument, the Taxpayer is correct that in assessing properties municipalities must consider all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). However, even if a municipality fails to consider an important market factor, as the Town most certainly did here, a taxpayer is not entitled to an abatement unless the taxpayer shows the municipality's error resulted in overassessment. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899). The board finds that while the Town failed to consider reclamation costs, the Taxpayer did not show that the

Town's failure resulted in overassessment, and therefore, this Taxpayer argument does not show overassessment.

Concerning the Taxpayer's second argument, the board thoroughly reviewed Mr. Bramley's report and ultimately concluded the \$250,000 appraised value was too low.

Specifically, the board makes the following observations about the Bramley appraisal.

1) Mr. Bramley's highest-and-best-use analysis was generally consistent with the board's highest-and-best-use conclusion. The Property's highest and best use in 1994 was development land, consisting of a house lot surrounding the existing house, several road frontage lots and several interior lots accessed by an interior road. To fully develop the Property would require reclamation of the gravel pit. The board was unclear as to how quickly the Property could be developed, but the parties' evidence showed the real estate market in Pelham for single-family house lots was greatly expanding in 1994. Both parties submitted 1994 sales of land for new subdivisions, bulk sales of

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individual lots and sales of single lots. The board, however, had some questions about when the market began its active phase, which would warrant further lot development. The Bramley appraisal, page 14, stated that since late 1993, Pelham had experienced new home construction and growth should continue. This was consistent with the Town's information. Therefore, the board concludes in 1994 a prospective purchaser would buy the Property for development purposes with short-term plans to first subdivide the house lot and the frontage lots and then to subdivide interior lots, especially the land

near the frontage lots.

2) Mr. Bramley estimated a \$185,000 value for the existing house with four acres. This estimate seems reasonable although the board opined the land size might be slightly larger than 4 acres to preserve the pastoral setting.

3) Mr Bramley estimated there would be four frontage lots, and he valued these lots at \$15,000 a lot (\$60,000 total). The board finds the \$60,000 estimate to be low. After walking the frontage, reviewing the survey plan and making adjustments to the frontage for the house lot, creeks, anticipated interior roads, and the power-line easement, the board concludes the frontage could yield five to six lots of approximately two acres each. The board also questions Mr. Bramley's \$15,000 per-lot value. Mr. Bramley used bulk sales of lots with adjustments for various factors, most importantly the Property's lack of approval. The Town, on the other hand, demonstrated that lots on through streets sold for between \$37,000 and \$58,000 with a \$43,800 mean and a \$40,000 median. The Property's frontage lots would take very little to develop, and even if the board uses Mr. Bramley's 50% development factor, the frontage lots were worth \$20,000 per lot. Assuming five lots at \$20,000/lot equates to a \$100,000 value for the frontage lots.

4) Mr. Bramley estimated a \$150,000 value for the land remaining after subdivision of the house lot and the frontage lots. This remaining land included the gravel pit and some wetlands, but it also included some easily developable front acres. The photographs showed and the view confirmed that

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the front portion of the Property, i.e., one lot from the road, could be easily developed. Because of the varying values and varying ease of

developability of this Property, the board finds Mr. Bramley's per-acre value methodology for the remaining land to be overly simplistic. Any prospective purchaser of the Property would consider its various economic units, and the remaining land would not be viewed as one economic unit. Even if the board could get past this methodology concern, the board could not accept Mr. Bramley's \$2,000 per-acre value because he used only one sale to establish that value, and that sale was an FDIC sale. Such sales have not been found to represent market value, and Mr. Bramley did not submit other sales to support the FDIC sale. See also Society Hill at Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253 (1994) (party proffering a sale has the burden to show the sale was representative of market value). Because Mr. Bramley failed both in his methodology and in his use of the FDIC sale, the board does not accept his analysis concerning the so-called "remaining land."

5) Mr. Bramley's appraisal, along with the Taxpayer's other evidence, clearly established a \$145,000 reclamation cost. The appraisal did not, however, consider any value for the remaining gravel. The Taxpayer asserted that the gravel pit was "essentially depleted." But there was other evidence that the gravel pit still contained sufficient gravel to warrant consideration. The remaining gravel could be used for sale off site or could be used for developing the Property. Mr. Currier estimated at the hearing that 5,000 to 8,000 yards of gravel remained. During 1994 and 1995, approximately 23,000 cubic yards of gravel and fill were removed from the pit. Mr. Gauthier, the pit operator, testified that fill in place was worth approximately 50¢ a yard and bank-run gravel was worth approximately \$1.50 to \$2.00 a yard in place. Arguably, any use of the gravel would require a consideration of possibly higher reclamation costs and any adverse effect the removal might have on the developability of the gravel pit for house lots.

Nonetheless, the board concludes any purchaser of the Property would consider the gravel's value either for off-site sale or on-site use. Mr. Bramley did not give any consideration for this factor.

6) After spelling out our specific concerns with Mr. Bramley's report, the board presents the following calculation to demonstrate why the board does not accept Mr. Bramley's \$250,000 value. The following calculation demonstrates the weakness of Mr. Bramley's value estimate. Basically, the board took Mr. Bramley's \$395,000 value without consideration for reclamation costs, subtracted the \$185,000 for the house and the \$145,000 for the reclamation costs, leaving a \$65,000 remainder value. Taking this one step farther, one could subtract Mr. Bramley's \$60,000 value on frontage lots, leaving only \$5,000 for the rest of the remaining 77.5 acres, which as we discussed above has significant developable land near the road.

\$ 395,000	Total Value (also equalized value)
<u>- 185,000</u>	House with four acres
\$ 210,000	Approximately 85.5 acres
<u>- 145,000</u>	Reclamation Costs (Note 1)
\$ 65,000	Approximately 85.5 acres (Note 2)
<u>- 60,000</u>	Value from Frontage Lots (8 acres)
\$ 5,000	Value of Remaining Land (approximately 77 acres)

Note 1: No consideration for remaining gravel value, which might offset reclamation costs.

Note 2: This includes frontage lots, developable front pastures and remainder.

Based on this check of Mr. Bramley's figures, the board cannot conclude that the 85.5 acres was only worth \$65,000 or that the "remaining" 77 acres was worth only \$5,000.

Based on the above analysis and discussion, the board finds the Taxpayer

did not show the Property was overassessed.

The board also notes that Town Comparable #1 supported a conclusion that the Property was not overassessed. The board has not placed any conclusive weight on Comparable #1 because that sale occurred in 1996. Nonetheless, Comparable #1's sale price could be viewed as confirming evidence that Property's assessment was not excessive.

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The Town also asserted the Taxpayer's nonappealed properties were underassessed. A taxpayer has the burden of showing its entire estate was properly assessed. Thus, even if we had concluded that the Taxpayer had shown the Property was overassessed, the board would have found the Taxpayer did not show her entire estate was overassessed. The Taxpayer did not ask Mr. Bramley to perform any valuation analysis on the nonappealed properties. Rather, Mr. Currier simply testified that he thought the nonappealed properties' equalized values were fairly reflective of market value. He did not support this statement in any way. On the other hand, the Town presented some information that drew into question whether the nonappealed properties were properly assessed. The board's view of the nonappealed properties also raised some questions about whether the nonappealed properties were properly assessed, especially the Main Street property (\$25,400 equalized value).

Finally, the Taxpayer raised the issue of whether the Town had erred by even adjusting the assessment in a selective way, i.e., not part of a general review of the Town. The board was troubled by the Town's failure to comply with its statutory and constitutional assessing duties, the Town had apparently failed to properly maintain its assessment -- nonetheless, the Town

is not only authorized but is required to correct assessments that it concludes are not in line with the general level of assessment. Correction for a low assessment does not constitute illegal spot assessing.

Findings of Fact and Rulings of Law

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;

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- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
 - d. the request was irrelevant.
1. Granted.
 2. Neither granted nor denied.
 3. Granted.
 4. Neither granted nor denied.
 5. Granted.
 6. Granted.
 7. Granted.
 8. Granted
 9. Granted.
 10. Granted.

11. Neither granted nor denied.
12. Granted.
13. Granted.
14. Granted.
15. Denied.
16. Granted.
17. Denied.
18. Denied.
19. Denied.
20. Denied.
21. Denied.

Rehearing

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

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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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur Greene, Esq., Counsel for Priscilla C. Currier, Taxpayer; and Chairman, Selectmen of Pelham.

Date: December 17, 1996

Valerie B. Lanigan, Clerk

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