

Alanson H. Sturgis

v.

City of Portsmouth

Docket No.: 15697-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "City's" 1994 assessment of \$357,900 comprised of the following items:

Land

1-acre site for the main dwelling	\$109,700
1-acre site for the cottage	\$ 20,000
13.93 acres land in current use	\$ 1,000

Buildings

Main dwelling	\$175,900
Cottage	\$ 28,900
18' x 20' garage	\$ 5,000
24' x 24' garage	\$ 7,000
11' x 14' shed	\$ 600
8' x 22' shed	\$ 500
8' x 10' shed	\$ 400
4' x 50' pier	\$ 8,900

<u>Total</u>	\$357,900
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The City reviewed the Taxpayer's request for abatement and denied the abatement because the City's adjustments resulted in a slightly higher

assessment of \$358,400 comprised of the following items (differences in bold):

Land

1-acre site for the main dwelling	\$109,700
1-acre site for the cottage	\$ 20,000
13.93 acres land in current use	\$ 1,000

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Buildings

Main dwelling	\$175,900
<b>Cottage</b>	<b>\$ 27,400</b>
18' x 20' garage	\$ 5,000
<b>24' x 24' shed (formerly noted as garage)</b>	<b>\$ 1,200</b>
11' x 14' shed	\$ 600
8' x 22' shed	\$ 500
8' x 10' shed	\$ 400
4' x 50' pier	\$ 8,900
<b>8' X 16' pier (floating platform)</b>	<b>\$ 3,900</b>
<b>8' x 16' pier (floating platform)</b>	<b>\$ 3,900</b>
<b><u>Total</u></b>	<b>\$358,400</b>

The Taxpayer and the City waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatement is denied.

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 failed to

carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the cottage interior is drywall with some sheetrock and beaverboard and not plaster as the City stated;
- (2) the cottage was originally constructed to house colts and has no insulation, foundation or cellar and the water pipes are exposed;
- (3) the City erroneously assessed a value on two floating rafts, which are not permanent attachments to the Property and are removed and stored in winter months;
- (4) a January 1995 appraisal estimated a \$17,000 value for the cottage; and
- (5) the floats may or may not be sold with the Property, but since they are not permanently attached they should not be assessed.

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The City argued the assessment was proper because:

- (1) the Property has salt water frontage and is located in a quiet, secluded neighborhood with an unobstructed view of the water;
- (2) the cottage is in fair condition, and the physical condition and quality construction were reflected in the assessment;
- (3) the cottage value is only 8% of the total assessed value on the Taxpayer's entire estate;
- (4) the pier was valued at \$60 per-square-foot and depreciated 26% for age and condition and is permanently affixed to the Property; and
- (5) the floats should be taxed because they would be sold with the Property.

**BOARD'S RULINGS**

The Taxpayer clearly stated in his appeal that he was appealing only the value of the cottage and the taxability of the floating platforms. The floating platforms were not initially assessed and taxed to the Taxpayer in 1994. However, because upon the City's review of the 1994 abatement request, they were added and essentially became an offset to the reduction in the value to the cottage and the 24' x 24' garage, the board will consider the issue of the floating platforms in the 1994 appeal.

The board's denial of the Taxpayer's appeal hinges primarily on the concept contained in Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), which states a taxpayer that appeals only a portion of its taxable estate can only be granted an abatement if the taxpayer shows the total valuation of all its property is disproportionate.

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis & c. Bag Co. v. Claremont, 98 N.H. 446, 499, 102 A.2d 512, 516 (1954). "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

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In this case the Taxpayer argues his assessment should be reduced approximately \$19,700 for the overassessment of the cottage and the valuation of the two floating platforms. This amounts to less than 6% of the total assessed valuation including current-use land or approximately 3% of the

Property's estimated market value if all the land were assessed at ad valorem.

The Taxpayer presented no evidence as to the market value of the Property as a whole, either in current use or at ad valorem. Because these two components (cottage and platform) of the total assessment are so slight relative to the total assessed valuation and because no evidence was submitted as to the total valuation, the board finds the Taxpayer did not fulfill his burden in showing that the entire Property was disproportionately assessed.

The decision could and probably should conclude at this point. However, the Taxpayer raised an interesting argument that the floating platforms, because they are easily removable, should not be taxed at all. For the reasons that follow the board concludes that they are taxable pursuant to RSA 72:7 as a component of a wharf.

First, perhaps a description of this portion of the Property in question is in order. The wharf is comprised of several distinct sections. There is one portion of the wharf that extends approximately 50 feet from the Taxpayer's shore on pilings over the Sagamore Creek, a tidal creek. At the end of this fixed portion is a hinged metal ramp that rests on floating platforms at its far end. The floating platforms are attached by a looped cable or rope to fixed pilings in Sagamore Creek so as to allow the platforms to float with the tides. Obviously the purpose of this arrangement is to enable the docking of boats both in a portion of the creek that has adequate depth at low tide and at any time during the ebb and flow of the tide.

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In arriving at this decision, the board has reviewed the following statutes and definitions in its analysis.

**RSA 72:7 Buildings, etc.** Buildings, mills, wharves, ferries, toll bridges, locks and canals and aqueducts owned by private parties, any portion of the water of which is sold or rented for pay, are taxable as real estate. (Emphasis added.)

**Wetlands Board Rule Wt 601.09 (k) Piers.** "Piers" means elongated structures extending into the water, generally perpendicular to the shore, for use as a berth for watercraft. Piers consist of solid or filled structures, platforms on piles or cribs, or floating platforms, or various combinations of these.

**Wetlands Board Rule Wt 601.09 (m) Wharves.** "Wharves" means those structures built parallel to or lengthwise along the shore so watercraft may berth alongside.

**Webster's 9th Collegiate Dictionary Definition (1989). Wharf (1):** a structure built along or at an angle from the shore of navigable waters so that ships may lie alongside to receive and discharge cargo and passengers.

It is clear from the definitions of wharves and piers that an RSA 72:7 wharf is a structure that enables boats to be able to dock in navigable waters and take on or discharge passengers and/or goods. In this case, the Taxpayer's wharf includes several components which work in conjunction with each other to perform that function. Obviously without the float component of the wharf, the Taxpayer's fixed pier would not be able to, with any great convenience, provide the docking capabilities because of the tidal action in Sagamore Creek. Therefore, the board concludes that while the floating platforms are removable (and in fact because of the necessity to float are less fixed than other portions of the wharf), that feature alone does not make them not taxable. Their use is an integral and necessary one for the full utility of the wharf.

Further, the mere fact that these structures exist over state waters does not diminish their taxability. All littoral property owners have the

right of reasonable access to and use of the water on which their properties front. The state, through the wetlands board, (see RSA Chapter 482-A, and the Wetlands Board Rule Wt.) carry out the public police power of protecting the environment by regulating the construction of various structures over state

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water. However, they do it in such a way so as not to inordinately infringe upon the landowners' degree of freedom of access to the water and use and enjoyment of the land, see Wt. 102.03. Clear evidence of the state's regulations being a police power is contained in RSA 482-A:10, which provides that if the actions of the Wetlands Board exceed the balance of police power, the superior court can assess damages for the property rights lost. Consequently, the board rules the state's regulation does not negate the wharf's taxability. The Taxpayer's structure solely benefits the Taxpayer and enhances the Taxpayer's real estate bundle of rights.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds

on appeal are limited to those stated in the reconsideration 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

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alanson H. Sturgis, Taxpayer; and Chairman, Board of Assessors, City of Portsmouth.

Date: February 10, 1997

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Valerie B. Lanigan, Clerk

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