

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

and

Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the following 1994 assessments. (The properties collectively called the "Properties" or individually the Stowell Property or Stevens Property.)

Dorothy Stowell ("Stowell")

Lot 7 (1-acre lot with a cottage and a camp) -- \$216,100

Lot 8 (vacant .35-acre lot) -- \$7,600

C. Laurence Stevens and Dorothy Stowell (collectively "Stevens")

Lot 4 (vacant .20-acre lot) -- \$20,200

Lot 5 (.40-acre lot with two cottages) -- \$136,000

Lot 6 (.30-acre lot with a cottage) -- \$49,600

Lot 9 (vacant .30-acre lot) -- \$15,100

These appeals were consolidated for hearing. For the reasons stated below, the appeals for abatements are granted.

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The Taxpayers have the burden of showing the assessments were disproportionately high or were unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers submitted substantial evidence and arguments. The Taxpayers basically argued the assessments were excessive because:

- (1) the Town erroneously assessed the lots as if they were subdividable and separately transferable when the commonly owned lots have merged under the zoning ordinance;
- (2) the combined value of Lots 7 and 8 (without subdivision potential) was between \$122,000 and \$143,000 based on a realtor's value opinion; and
- (3) the combined value of Lots 4, 5, 6 and 9 (without subdivision potential) were worth between \$117,000 and \$132,000 based on a realtor's value opinion.

The Town argued the assessments were proper because the equalized assessments were consistent with the Kawka appraised value.

Board's Rulings

Subsequent to the hearing, the board made preliminary findings in an order dated December 20, 1996 (Order). The board also ordered the Town to recalculate its assessments based on the preliminary finding that the lots were not subdividable. The Town summarized its calculations in its letter of March 6, 1997 recalculating the combined assessments of Lots 7 and 8 at \$223,100 and Lots 4, 5, 6 and 9 at \$195,700.

In the Order, the board made a preliminary finding that the lots separately owned are not subdividable, and thus, Lots 4, 5, 6 and 9 should be viewed as one taxable estate and Lots 7 and 8 as another taxable estate.

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Without reiterating the board's preliminary findings in the Order, the board incorporates the Order in this decision relative to the inability to subdivide these parcels.

Based on the evidence, we find the assessments are: Stowell Property, \$204,450; Stevens Property, \$195,700. The combined Stowell assessment is based on the Town's revised assessment (contained in its letter of March 6, 1997) with an additional 10% undeveloped adjustment to the land assessment for the easement for the benefit of the Stevens Property and reduced utility of the southern portion of Lot 7 due to its shallow depth. The board has not allocated the value between land and buildings, and the Town shall make this allocation in accordance with its assessing practices. The combined Stevens assessment is based on the Town's revised assessment (contained in its letter

of March 6, 1997) valuing the four lots as one property.

Stowell Property - Lots 7 and 8

Three valuation estimates were submitted as evidence for the Stowell Property. First, the Town recalculated the two lots as one for a total assessment of \$223,100 or an indicated market value of approximately \$178,500 when adjusted by the Town's 1994 equalization ratio ($\$223,100 \div 1.25$). Second, an opinion of value was submitted from a realtor, Mr. LaBonte, that estimated a market value range based on adjusted comparable sales of approximately \$122,000 to \$143,000. LaBonte also submitted other opinions of value; however, none of them were substantiated with comparable sales. Lastly, the Taxpayers submitted an appraisal prepared by L. Richard Kawka (Kawka appraisal) which estimated the market value of Lots 7 and 8 at \$175,000 and \$7,000 respectively.

The board extensively reviewed all the evidence including the opinions of value and appraisal. The board was unable to place much weight on the Kawka appraisal because the appraiser used an inappropriate unit of comparison in the sales approach. The appraiser used the square footage of the cottages as the unit of comparison. While cottages do usually contribute some to a

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seasonal, waterfront property's value, generally the size of the lot and its exposure to the water are more significant factors affecting value than the square footage of a cottage. Further, the Kawka appraisal based its valuation premise on the lots as if subdividable and separately transferrable. For the reasons stated in the Order, the board found this is an incorrect premise.

The board also reviewed the comments and opinions of value from Mr.

LaBonte. However, the board was unable to adopt the LaBonte estimates of value because he significantly discounted the contributory value of the two cottages on one parcel. LaBonte stressed that the presence of two cottages restricts the number of individuals in the market that would be interested in such a property. The board finds the two cottages do not have as much contributory value as if they were on separate subdividable lots. However, the board finds that the two cottages appear to be in reasonably good condition and are of average cottage construction. Consequently, we find they would contribute more in the sale of the Stowell Property than attributed by the LaBonte opinions of value.

The board finds, based on the submitted deeds and maps, that Lots 7 and 8 are encumbered by an easement to the benefit of Lots 4, 5, 6 and 9 for the use of the "beach" at the southern end of Lot 7. Further, the narrow configuration of the southern end of Lot 7 coupled with the easement reduces the value of the waterfrontage beyond that adjusted for by the Town on the assessment-record card. Consequently, the board has applied a 10% additional undeveloped depreciation (x .70) to the land assessment, which results in a total assessed value of \$204,450 or an indicated market value of approximately \$163,600 ($\$204,450 \div 1.25$). The board also finds this market value estimate reasonable relative to sales submitted in the LaBonte opinion of value and Kawka appraisal.

Similarly, the board was presented with three general indications of value for the Stevens Property. First, the Town recalculated the four lots for a total assessment of \$195,700 or an indicated market value of approximately \$156,550 ($\$195,700 \div 1.25$). Second, an opinion of value by Mr. LaBonte indicated a value range of approximately \$117,000 to \$132,000. Again, Mr. LaBonte submitted other comments and opinions of value; however, only the \$117,000 to \$132,000 range was substantiated by comparable sales. Third, a separate Kawka appraisal was submitted that estimated the values for Lots 4, 5, 6 and 9 to be \$1,500, \$100,000, \$60,000 and \$6,500 respectively for a combined value estimate of \$168,000.

First, for the same reasons stated for the Stowell Property, the board is unable to adopt the LaBonte opinion of value. Second, again, the board was unable to give the Kawka appraisal conclusive weight because of his reliance on the cottage size as a unit of comparison and his methodology of valuing the lots as separate subdividable properties. (The board does note, however, that in this case the Kawka appraisal is more reasonable in that the Property's cottages' and the comparables cottages' square footages are much more similar; thus, while still generally an inappropriate unit of comparison, the cottages' square footage does not result in an extreme value conclusion as it did in the Stowell Property.) The board did review and use in a general fashion the sales and listings on page 22 of the Kawka appraisal that provided a general impression of the market of waterfront properties in Milton. Lastly, the board finds the Town's recalculated assessment of \$195,700 reasonable. The recalculation combines the four lots as one and does away with three separate site assessments for the three cottages. As the board found in the Order, it is most likely the four lots would be marketed as one property with the three cottages to be used in conjunction with each other. Further, the board finds

the Stevens Property is benefitted by the easement across the Stowell Property

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to use the beach at the southern part of Lot 7. This is a benefit that is transferrable with the Stevens Property and needs to be considered in any opinion of value.

If the taxes have been paid, the amount paid on the value in excess of \$204,450 for the Stowell Property and \$195,700 for the Stevens' Property 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 1995 and 1996. 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to C. Laurence Stevens and Dorothy Stowell, Taxpayers; and Chairman, Selectmen of Milton.

Date: June 6, 1997

Valerie B. Lanigan, Clerk

0006

Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

and

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

ORDER

The board has reviewed the parties' evidence and arguments, and the board has held lengthy deliberations. The board has made a preliminary finding that the lots are not subdividable, and thus, Lots 4, 5, 6 and 9 and Lots 7 and 8 should be valued as unsubdividable parcels. The board bases this determination on our extensive review of the size and configuration of the parcels, the zoning and subdivision ordinances, the Shoreland Protection Act (RSA ch. 483-B) and the septic requirements. Additionally, given the costs to upgrade the septic systems and to take the other steps needed to subdivide, even if

the lots were subdividable one could conclude the parcels' highest and best uses would be to sell as two properties (one = Lots 4, 5, 6 and 9; two = Lots 7 and 8).

Despite our clarity about the subdividability, the board has some concerns about how to calculate the proper assessment. Therefore, the board orders as follows.

The "Town" shall draft new assessment cards, assessing the lots as if combined. The Town should review the two resulting assessments (Lots 4, 5, 6 and 9; and Lots 7 and 8) to see if the assessments are consistent with the parcels' estimated market values.

The LaBonte report on Lots 7 and 8 did not include the proper comparison grid. Instead, it included the grid sheet for Lots 4, 5, 6 and 9. The "Taxpayers" shall file the LaBonte grid sheet for Lots 7 and 8. The Taxpayers shall also file a copy of the August 22, 1996 LaBonte letter, which was paraphrased but not presented.

The parties shall file this information within 20 days of the clerk's date below.

The board strongly encourages the parties to settle this case. The information provided so far demonstrates an abatement is due, but the value evidence still requires further analysis. (The LaBonte information was the "best" evidence presented on value.) The parties know the properties' market values better than the board and should use their knowledge to resolve these cases. The Taxpayers' market information of lake sales and the Town's assessment recalculation should provide the parties with data from which to calculate a fair assessment. The parties shall discuss settlement with each other within the next 20 days. The board is available, via telephone conference, to assist the discussions. The Taxpayers shall discuss settlement and then inform the board, in writing, about whether settlement was reached.

Finally, the board will not consider the "additional comments" submitted in the Taxpayers' August 25, 1996 letter. The board, generally, does not accept new information after a hearing, except by board leave. TAX 201.37(e).

The board will, of course, consider the information requested in this order in reaching a decision if a settlement does not occur.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to C. Laurence Stevens, Individually and as agent for Dorothy Stowell; and Chairman, Selectmen of Milton.

Dated: December 20, 1996

Valerie B. Lanigan, Clerk

0005

Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

and

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

ORDER

This order relates to the "Town's" January 31, 1997 letter and the board's December 20, 1996 order.

The Town apparently misunderstands the board's order. The board is not declaring the lots merged, and the board is not requiring the "Taxpayers" to seek merger. The board is simply looking at the "Properties" from an assessment standpoint as of April 1, 1994. The board must view the Properties and must value the Properties based on the Properties' legal status and highest and best use as of April 1, 1994. How the Town now wishes to treat the Properties for planning purposes is not within the board's jurisdiction.

The board only ordered the Town to recalculate the assessment given the board's position.

Therefore, within 10 days of the clerk's date below, the Town shall comply with the board's December 20, 1996 order.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that copies of the foregoing order have this date been mailed, postage prepaid, to C. Laurence Stevens, Individually and as agent for Dorothy Stowell; and Chairman, Selectmen of Milton.

Date: February 20, 1997

Valerie B. Lanigan, Clerk

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

and

Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

ORDER

The board received the attached letter from Dorothy Stowell on June 20, 1997 without any indication that it had been copied to either the Town or Laurence Stevens. The board intends to treat the letter as a motion for rehearing pursuant to TAX 201.37. Before it responds to the letter, the board will provide 10 days for the Town or Laurence Stevens to comment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to C. Laurence Stevens and Dorothy Stowell, Taxpayers; and Chairman, Selectmen of Milton.

Date: June 30, 1997

Valerie B. Lanigan, Clerk

0006

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

and

Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

ORDER

This order responds to Dorothy Stowell's (Stowell) June 20, 1997 letter, Stowell's July 10, 1997 and July 16, 1997 follow-up letters and Laurence Stevens July 5, 1997 letter. The board collectively treats these letters as a motion for rehearing pursuant to TAX 201.37.

The board denies the motion for rehearing of its June 6, 1997 decision (decision) but takes this opportunity to clarify the effect of the board's decision.

The board's jurisdiction in an RSA 76:16-a appeal is statutorily limited to determine whether an assessment is proportionate to market value and the

town's general level of assessment. Appeal of City of Nashua, 138 N.H. 261 (1994); Barksdale v. Town of Epsom, 136 N.H. 511, 515 (1992); Appeal of Town of Sunapee, 126 N.H. 214 (1985). Further the board, as a quasi-judicial body, must weigh the evidence, consider all factors that may affect a property's market value and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63 (1975).

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In the decision the board made several findings including: 1) Lots 4, 5, 6 and 9 and Lots 7 and 8 should be valued as not subdividable parcels; and 2) a deed provision allows Lots 4, 5, 6 and 9 to have access to the beach on Lots 7 and 8. These are factors the market is likely to recognize and thus need to be reflected in the assessment. The board's decision, however, does not determine whether the parcels are legally not subdividable or whether the provision of the deed is a license or an easement. Those determinations are beyond the board's statutory jurisdiction. However, the finding that these factors affect market value is within the board's statutory authority and, consequently, the board's decision stands for the reasons stated in it.

Pursuant to RSA 541:6, any appeal of this order by the Taxpayer/Municipality to the supreme court must be filed within thirty (30) days of the date on this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to C. Laurence Stevens and Dorothy Stowell, Taxpayers; and Chairman, Selectmen of Milton.

Dated: July 25, 1997

Valerie B. Lanigan, Clerk

C. Laurence Stevens and Dorothy Stowell

v.

Town of Milton

Docket No.: 15765-94PT

AND

Dorothy Stowell

v.

Town of Milton

Docket No.: 15766-94PT

ORDER

The board, having received and reviewed the "Town's" correspondence dated November 13, 1997, rules the "Taxpayers'" letter of October 8, 1997 is "moot." The board considered the Taxpayers' letter as a Motion to Enforce. Since the board's June 6, 1997 decision ordering the Town to abate has been carried out, the above captioned cases are closed. No further action to be taken on these cases.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Valerie B. Lanigan, Clerk

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to C. Laurence Stevens and Dorothy Stowell, Taxpayers; and Chairman, Selectmen of Milton.

Dated:

Valerie B. Lanigan, Clerk

0001