

Alan A. Smith

v.

Town of Tamworth

Docket No.: 15876-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$194,419 (buildings \$143,400; land \$49,600; current use land \$1,419) on an 18-acre lot (16 acres in current use) with a single-family home (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a \$16,700 assessment. The Taxpayer and the Town 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 granted.

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 carried this burden.

The Taxpayer argued the adjusted assessment was excessive because:

- (1) the house was built in 1908 as a summer home and has no central heat;
- (2) the assessment increased 276% from July 1994 to December 1994 when comparable properties' assessments increased only 90%;
- (3) abutting lots have different frontage values than the Property, which is \$15,310 per acre compared to Lot 102 at \$4,424 per acre;
- (4) abutting lots were not assessed a driveway value, yet the Property was assessed \$3,000 for a seasonal driveway and the access road is not maintained by the Town during the winter months;
- (5) the Property's current-use value is \$98.60 per acre when abutters are assessed \$60.85 and \$19.76 per acre in current use;
- (6) the land value increased \$6,719 after it was placed in current use; and
- (7) the Property's market value on April 1, 1994 was \$184,000 based on the insurance appraiser's opinion of value.

The Town argued the adjusted assessment was proper because:

- (1) the building was given a functional adjustment for its seasonal nature and the current-use value was adjusted to correct previous errors and to add the seasonal road adjustment (a 25% adjustment to the site and frontage values);
- (2) the land was assessed consistently with other lots in the Town;
- (3) the driveway was not included in the map for current-use application in 1983 but should be assessed ad valorem because it doesn't qualify for current use;
- (4) the Property is located in a very desirable, highest-priced area in the Town;
- (5) the conservation restrictions do not have a negative impact on the value because the restrictions serve to maintain the area's pristine nature;

(6) the assessment increase reflects the changes in the market from the last revaluation in 1981 to the 1994 revaluation;

(7) the Taxpayer's per-acre comparisons do not reflect differences in topography, road frontage, waterfrontage, current use, etc.; and

(8) the assessment is well within range of the Taxpayer's value estimate and comparable properties' assessments support the Property's assessment.

BOARD'S RULINGS

Based on the evidence, the board finds the proper assessment to be \$190,169 (land \$46,769; buildings \$143,400).

Two issues were raised in this case: 1) how should the portion of the Property not in current use be assessed; and 2) was the current-use value per acre proper.

Part 2, article 5 and article 5-B and RSA 75:1 and Chapter 79-A provide for two bases for assessing property in New Hampshire. First, all property, unless enrolled in current use, should be assessed based on market value. RSA 75:1. Second, property properly enrolled in current use pursuant to Chapter 79 and the current use regulations CUB 100-300 is assessed at rates determined by the current use board. In this case, the board has both bases before it.

Assessment of Land Not In Current Use (LNICU)

The first task in attempting to value the portion of the Property not in current use is to properly identify the acreage and its various value-influencing factors. As of 1994 the board finds the area that does not qualify for current use was reasonably described by the Town as 3.34 acres. Three acres entail a 2-acre improved site around the building and a future undeveloped site that was shown

on the Taxpayer's 1983 original current-use application map. Further, the Town is correct that driveways

are part of the curtilage as defined in CUB 301.04 that do not qualify for current use and should, thus, be valued according to RSA 75:1.

The next task is to assess the 3.34 acres at market value as defined in RSA 75:1 considering all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The board agrees with the Town that trying to make a comparison as the Taxpayer does between the Taxpayer's LNICU and neighboring property's LNICU is relatively meaningless. As noted above, individuals can apply for differing amounts of land to be placed in current use and the remaining LNICU may have very different market value influencing factors such as view, access, road frontage, water frontage, topography, etc.. Thus comparisons are difficult, if not meaningless.

However, the assessment methodology the Town employed in the ad valorem assessment of the Property should be carried forwards in the assessing of the LNICU as reasonably as possible. The board finds the Town's methodology to be inconsistent and in some cases sloppy and incorrect. For instance, the Town initially assessed on the current-use card the 2-acre site around the building using a hypothetical frontage of 300 feet to a depth of 290 feet adjusted by excess and undeveloped factors from the New Hampshire appraisal manual for 300 feet. However the Town later changed it to a .92-acre site with 200 feet of frontage but did not change the excess frontage factor. The Town also assessed the 1-acre undeveloped site for \$17,500; however the mathematics of the numbers on the card do not work out to \$17,500. Further, the Town on the ad valorem assessment-record card applied a factor of .75 for the seasonally maintained status of the Fowlers Mill Road but did not carry that factor forward to the site calculations on the current-use card. The board acknowledges that valuing a property such as this is difficult when trying to value in the ad valorem situation a property developed as one site with minimal frontage and then later in the current-use situation valuing both a developed

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site and a reserved undeveloped site accessed by a relatively long driveway. However, the basic concepts that the Town uses in its ad valorem assessment should be carried forward to the current-use card.

Consequently, the board finds the valuation of the LNICU should be calculated as follows.

Main House Site	200'x 200'	
Price per front foot	x	\$200
Topography	x	.9
Excess Frontage	x	100
Undeveloped	x	100
Road Condition	x	.75
Access	x	<u>.95</u>
Total		\$25,650
Reserved Site	208'x 208'	
Price per front foot	x	\$204
Topography	x	.80
Excess Frontage	x	.93
Undeveloped	x	.70
Road Condition	x	.75
Access	x	<u>.95</u>
Total		\$15,750
Driveway	25' x 600'	
Basic Value		\$6,300
Topography	x	.80
Excess Frontage	x	.93
Undeveloped	x	.70
Market Adjustment	x	<u>.50</u> (presumably for shape)
Total		\$1,650
Rear Acreage (1.08)		\$1,500
Total LNICU		\$44,550

The above calculations assume that the improved site value is the major contributor of value to the LNICU, but that it has a long access and is off a seasonally maintained road. Also the reserved undeveloped site and the drive were given an excess frontage adjustment based on a total of 233 feet because it is reasonable to view them as one contributory portion of land as opposed to separate components as the Town had assessed them on the current-use card.

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Current Use Value

The Taxpayer argued that the Town had inconsistently applied varying current-use values to his

Property and nearby properties. No evidence was submitted as to what current use forest category the Taxpayer had applied for. However, based on the Town's brief, the A4 classification is for white pine without a stewardship program as provided in CUB 304.03(h)(1). The Town's assessed value of \$96.80 is within the range determined by the current use board of \$81.00 to \$121.00. Therefore, the board determines that the Town has reasonably assessed the current-use land properly within the range set by the current-use board.

The Taxpayer also argued his assessment had increased at a greater percentage than some of his neighbors. However, a greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

The board also reviewed the building assessments and finds them to be reasonably assessed.

In summary, therefore, the Property is assessed as follows: LNICU \$44,550; Land in Current Use \$1,419; Paving \$800; Total Land Value \$46,769; buildings \$143,400; for a total of \$190,169.

The board notes that both parties presented evidence as to a change in the area of land placed in current use in 1995. However, the Taxpayer did not appeal his 1995 assessment and, therefore, the board has no jurisdiction to order what the proper assessment should be with the reduced area of LNICU. However, the board would encourage the Town to apply the concepts laid out in this decision in its 1995 assessment of the Property.

If the taxes have been paid, the amount paid on the value in excess of \$190,169 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. 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 "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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alan A. Smith, Taxpayer; and Chairman, Selectmen of Tamworth.

Date: November 27, 1996

Valerie B. Lanigan, Clerk

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