

**Balch Chocorua Trust**

**v.**

**Town of Tamworth**

**Docket No.: 15889-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of:

\$397,927 (land \$286,600; \$3,027 land in current use; buildings \$103,300) on Lot 119, a 47-acre lot containing two seasonal camps and ten bath houses with 42.11 acres not in current use (NICU);

\$12,300 (land \$11,100; buildings \$1,200) on Lot 62, a 3.2-acre lot with a well house; and

\$1,600 (adjusted) on Lot 59, a vacant, .23-acre lot (the Properties).

The Taxpayer also owns, but did not appeal, two other properties in the Town with a combined, \$401,100 assessment. The Taxpayer withdrew the appeal on Lot 59. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry its burden and prove disproportionality.

The Taxpayer argued the assessment on Lot 119 was excessive because:

- (1) the assessment on the NICU land increased significantly after the revaluation;
- (2) the Town's methodology appeared to be an attempt to recapture the current-use assessment;

The Taxpayer argued the assessment on Lot 62 was excessive because:

- (1) the assessment did not consider the conservation restrictions;
- (2) the Town assessed the lot as buildable;
- (3) the lot should have been assessed at \$500/acre or a total \$1,600 based on an opinion of value;

The Town reviewed sales within the conservation area, and the sales demonstrated the high value in this area.

The Town argued the assessment on Lot 119 was proper because:

- (1) there were no sales on Chocorua Lake, and thus, the Town looked at sales on other waterbodies and sales near Chocorua Lake with an adjustment for actual waterfront;
- (2) the \$600/foot was a conservative estimate;
- (3) the Taxpayer did not present any market value;
- (3) the last revaluation was in 1981, resulting in "sticker shock" because the waterfront assessments went up more than nonwaterfront properties

The Town argued the assessment on Lot 62 was proper because:

- (1) the lot received a 50% nonbuildable adjustment in addition to other adjustments;
- (2) the assessment attempted to capture the value of the lot as a water source;

### **Board's Rulings**

Based on the evidence, we find the Taxpayer did not carry its burden in showing the ad valorem value of the land not in current use (LNICU) for lot 119 the ad valorem assessment of lot 62 was excessive or disproportionate.

#### Lot 119

The issues raised in this appeal have to some extent been discussed in two earlier board cases; Arnold v. Town of Frankestown, Docket Nos.: 8718-90PT/11152-91PT/13819-93PT and in Virginia A. Soule v. Town of Sunapee, Docket No.: 14773-93PT. As in those cases, the primary issue is what is the proper ad valorem value for the portion of land NICU and what factors should be considered in arriving at its proper value. The 4.89 acres NICU must be assessed 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 bases for such a task is contained both in the statute and in the principles of appraising.

In valuing property, all real estate rights are assessed.  
**RSA 21:21 Land; Real Estate.** I. The words "land," "lands" or "real estate" shall include land, tenements, and herditaments, and all rights thereto and interests therein.

While they vary from property to property, these ownership rights are often viewed as a "bundle of rights". "Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate 10th Edition, 6 (1992). When appraising a

property that has no

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restrictions of rights (beyond being subject to taxation, eminent domain, police power and escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis of the entire property.

The highest and best use must be one that is legally permissible, physically possible, and financially feasible. In most properties there are many factors that influence value and contribute to the determination of the highest and best use. Such factors are nearly endless but commonly include influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view, and zoning. In valuing an unrestricted property, the effect of various value influencing factors are normally viewed collectively. However, in reality, not all factors are distributed evenly throughout the property. Some portions of a property may embody certain factors more than other portions. For example, the area of a lot that contains improvements is more valuable than unimproved areas, and the location on a lot from which a view is obtained is generally more valuable than obscured locations.

However, when a property is subject to current use assessment, certain rights and value influencing factors are temporarily veiled and not valued for taxation purposes. N.H. CONST. pt. II, art. 5-B; RSA 75:1; chap. 79-A. These rights and factors still exist, but they are suppressed or restricted by current use for tax purposes until sometime in the future when the land that embodies those rights or value influencing factors no longer qualifies for current use and is then assessed at market value.

assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the LNICU and any effect the balance of the property has on the LNICU. Here again the factors influencing LNICU are both internal and external to that portion of the property.

The Property to be valued ad valorem for lot 119 consists of a total of 4.89 acres. While no current use records were submitted to the board, the calculations, notes and a sketch on the assessment-record card indicate the 4.9 acres is comprised of the following components: 1) .55 acres with the dimensions of 320 feet of frontage on Lake Chocorua to a depth of 75 feet containing the 10 bath houses used by the Taxpayer and other individuals in the area; 2) 2 acres comprising the curtilage around the "Wheeler" house; 3) a tenth of an acre comprised of a driveway approximately 20 feet by 220 feet; 4) 2.02 acres of the curtilage surrounding a dwelling noted as the "Old Cape" and barn and two sheds; and 5) .22 acres of an area surrounding the tennis court.

It is difficult in trying arrive at the ad valorem value of such truncated portions of the larger Property. Any mass appraisal technique, be it front foot method or site method, often becomes strained in trying to apply that methodology to this type of valuation exercise. Consequently, the board finds it is more important to estimate the value based on what rights are embodied by the total parcel NICU, in this case of 4.89 acres. The board finds the following rights and detriments are contained in these various portions of the LNICU: 1) access to Lake Chocorua through the bath house parcel for all normal water related activities; 2) the right for two dwellings

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to exist (the "old cape" and "Wheeler" house) with their attendant outbuildings; 3) use and enjoyment of tennis courts; 4) the views and privacy afforded from being

surrounded by land owned by the Taxpayer; and 5) the privacy and protection provided by the conservation easements given by the Taxpayer and other properties in the general neighborhood to the Chocorua Lake Conservation Foundation<sup>1</sup>.

Considering all these rights and enjoyments that are embodied by the 4.89 acres NICU, the board concludes that the land value of \$286,600 for those rights is not unreasonable. One must ask the hypothetical question of would a parcel of approximately 5 acres of land encompassing two houses, multiple bath houses, outbuildings and tennis courts with views and Lake Chocorua frontage sell for the \$286,600 (plus the building values of \$103,300). Based on the board's experience and knowledge, we answer that such assessment does not seem excessive. Further, no market evidence was submitted to the contrary by the Taxpayer.

#### Lot 62

Lot 62 is comprised of 3.2 acres containing a well that serves three dwellings. The board finds the Town's adjustments of undeveloped -25% and the -50% market adjustment reasonably recognizes the physical limitations of the

lot and the conservation easement restrictions pertinent to this lot. Even

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with the conservation easement restrictions, the board finds this parcel has more value than backland as argued by the Taxpayer. A total land and building value of \$12,300 is not an unreasonable market contribution for a water supply for three dwellings.

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<sup>1</sup> The evidence submitted by the Taxpayer indicated the Chocorua Lake Conservation Foundation was established to preserve and conserve the Chocorua Lake basin. Through systematic and collective efforts of many landowners in the area properties fronting on Lake Chocorua have been restricted to a density of no greater than one residential unit per 8 acres. The Taxpayer's Property granted a conservation easement in 1970.

Conservation easements often have a positive effect on the market value of land nearby but not encumbered by the easement. This increase in value due to the easement is often referred to as the "enhancement value" or "easement shadow" and must be accounted for in valuing the unencumbered land. See Vicary, Appraising Conservation Easements, The Appraisal Journal 138, (January 1994).

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

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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 Cornelia W. Lanou, Agent for Balch Chocorua Trust, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Tamworth; and Chairman, Selectmen

of Tamworth.

Date: September 27, 1996

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Valerie B. Lanigan, Clerk