

David Dana

v.

Town of Dalton

Docket No.: 16335-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessments of:

\$104,096 (land \$70,650; current use \$246; buildings \$33,200) on "Lot 52", an 11.359-acre lot (10.359 acres in current use; 1 acre not in current use) with a single-family home; and

\$61,800 on "Lot 35", a vacant, 9.21-acre lot (the Properties).

The Taxpayer also owns, but did not appeal, six other lots in the Town (some of which are in current use) with a combined, \$760,008 assessment. For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to

carry this burden.

The Taxpayer argued the assessment on Lot 52 was excessive because:

(1) the Town moved the bulk of the land value to the developed house site after the excess land was put in current use therefore depriving the Taxpayer of some of the benefits of current use;

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(2) a "random sampling" of approximately 70 assessed values for one acre home sites indicates a base value of \$13,450 per homesite; adding a \$7,000 well value and \$10,000 "Dalton Ridge" amenities value yields an estimated assessment value for a Dalton Ridge home site of \$30,450 resulting in an overassessment of \$46,200; and

(3) the assessed value for Lot 52 should be \$76,200.

The Taxpayer argued the assessment on Lot 35 was excessive because:

(1) the May 1995 Lownes sale in the Dalton Ridge subdivision for \$28,000 is supportive of Lot 35's value; and

(2) the lot has a value of \$25,200 derived from adjusting the value of \$29,545 ($\$325,000 \div 11$) on page 107 of the Thompson appraisal report for the lesser view and position on the mountain.

The Town argued the assessments on Lots 52 and 35 were proper because:

(1) the Lownes sale was a foreclosure sale that had been marketed by Fleet Bank; and

(2) the assessments for the Properties had already been adjusted by an amount recommended by the board in a previous decision.

Board's Rulings

Lot 52 (a/k/a Lot 25)

Based on the evidence, the board finds the Taxpayer did not carry his burden in showing the ad valorem value of the land not-in-current-use (NICU) was excessive or disproportionate. The Taxpayer stated he combined his 8.89-acre lot with several non-buildable lots in August 1994, thereby qualifying for current use and enrolled all but 1.0-acre and the home of Lot 52 in current use. The Taxpayer argued the Town transferred most of its total value into the 1.0-acre site thereby causing the site value to be disproportionate to all other home sites in the Town.

The Taxpayer submitted an exhibit (Taxpayer Exhibit #2) which consisted of 70 assessed site values of what he termed to be the 1) best properties with the finest homes, 2) others considered by the selectmen's clerk to be the best, and

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3) a random sampling. He then divided the number of acres assigned to each homesite by its assessed value to determine a \$13,450 value per acre, and added \$7,000 for a dug well and a \$10,000 amenities value (used by both the board's review appraiser for tax year 1991 Dalton Ridge appeals and also by Mr. Thompson in his 1991 report). The total value of \$30,450 was deducted from the \$70,650 Lot 52 assessed land value to show that his assessment was excessive by \$46,200. This analysis could not be used by the board because the Taxpayer did not submit any backup data for the board to review. No assessment record cards and no photographs were submitted to show how the comparables related to the subject. The board does not know, for instance, where these properties were located, the total size and topography of each lot, what type of improvement was on each lot and how they compared to the subject's home and land. Lacking that basic information, the Taxpayer's comparison could not be

relied on at all.

The board reviewed Mr. Thompson's 1991 appraisal (Taxpayer Exhibit #4), specifically his sales comparison approach of the subject Property on page 99.

Mr. Thompson compared the subject (then an 8.89 acre lot) to three improved sales consisting of 5.51 acres, 2.0 acres and 5.43 acres. His adjustments for differences in lot sizes were 3%, 6%, 3% respectively. The Taxpayer indicated that the minimum lot size in the Dalton Ridge Association was 5.0 acres. The issue before the board is what is the proper ad valorem value for the portion of the land NICU and what factors should be considered in arriving at its proper value. The 1.0-acre 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 determination is contained in the statutes and 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 lands, tenements, and hereditaments, and all rights thereto and interests therein.

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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, these rights are normally viewed collectively and valued at their highest and best use.

The highest and best use must be the property's most profitable use at a specific time, given legal, physical and financial limitations. Many factors influence value and contribute to the determination of the highest and best use. Such factors are nearly endless but commonly include both internal and external influences to the property such as location, size, utility, access, improvements, topography, view and zoning. However, in reality, these factors are rarely evenly distributed 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 (such as the subject) is more valuable than unimproved areas, and the location on the lot from which a view is obtained is generally more valuable than obscured locations.

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 and are held by the owner, 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. Land NICU does not have its rights or factors restricted by current-use assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the land NICU.

When trying to value land NICU, it is important to not become overly

technical or focus solely on the physical attributes of the land. The goal is to value the real estate rights that the physical land embodies. In this case, the Taxpayer stated that the Town did not have zoning requirements, however, the Dalton Ridge Association required a minimum of 5.0 acre lots. The house was situated on the lot in the best location to take advantage of the panoramic view and topography of the land. The board finds the rights of enjoyment are reasonably reflected in the 1.0-acre site value with the remaining land as a buffer for privacy, for recreational use, etc. Mr. Thompson's appraisal supports this theory in his sales grid by the minimal lot size adjustments he applied.

Lastly, based on the Taxpayer's calculations, the house and 1.0-acre home site would have a market value of \$76,200 (equalized value of \$67,600 X 1.13 equalization ratio) as of April 1995. The board must also look at the reasonableness of an assessment and use its judgment in determining if an assessment is proper. Based on the evidence submitted which includes Mr. Thompson's appraisal reports, the review appraiser's report and the board's prior 1991 decision on this property, and the board's judgment and experience¹, a market value of \$76,200 is unsupported by all of the evidence.

Lot 25 (a/k/a Lot 20)

Based on the evidence, the board finds the Taxpayer failed to prove Lot 25 was disproportionately assessed. The Taxpayer based his argument on three main sources: (1) a sales comparison within Dalton Ridge; (2) secondary sales comparables within the Town of Dalton; and (3) the April 1991 Thompson

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

appraisal. The Taxpayer testified that a comparable property (Lot 24) with 9.22 acres of land sold in June 1995 for \$28,000 having been on the market in excess of four years. The Taxpayer argued that Lot 24 was better than Lot 25 because it was 260

feet higher in elevation than the Property and was restricted by a 153 degree
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view easement (the Property being limited to 85 degrees). The Town argued that the sale was not arm's-length in that the original owners were in arrears and entered into an agreement in May 1994 with Fleet Bank in lieu of foreclosure.

Fleet subsequently turned the lot over to its OREO division who listed it with Realtor Sally Pratt.

The board has consistently held that bank sales do not meet the requirements of arm's-length transactions. "An arm's-length transaction is [a] transaction freely arrived at in the open market, unaffected by abnormal pressure or by the absence of normal competitive negotiation as might be true in the case of a transaction between related parties." B. BOYCE, REAL ESTATE APPRAISAL TERMINOLOGY 18 (REV. ED. 1984)." Appeal of Lakeshore Estates, 130 N.H. 504, 508 (1988). Lending institutions are generally more motivated to liquidate their foreclosure portfolio than to hold and manage property for its maximum return. Such actions are not normal market motivations and generally disqualify those transfers as arm's-length. See also Society Hill Merrimack Condominium Association & a. v. Town of Merrimack, 139 N.H. 253, 255 (1994). The board finds the sale of Lot 24 was not arm's-length because the seller was a bank and the Taxpayer did not present any evidence as to what adjustment would be required to equate the sale to the market value.

The Taxpayer further testified that secondary sales outside of the Dalton

Ridge development but within the Town of Dalton supported a per acre value of \$2,007. For many reasons, the board discounts this analysis. First, the Taxpayer gave the board five sales of properties ranging in size from 5.56 acres to 40.35 acres, added a premium of \$10,000 to each sale for Dalton Ridge amenities and then divided the total by the number of acres on each lot. A review of the assessment-record cards indicates that of the 40.35 acres of Map 409 Lot 68, 37.07 acres consists of forest land in current use. Map 410 Lots 16 through 19 appears to be a package sale of a four-lot subdivision. Map 412 Lot 22 also consists of land in current use, 15.43 acres of which is wetland.

Map 409 Lot 27.2 is located on a Class 6 road. The Taxpayer presented no

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evidence as to how these lots compared to the subject lot and made no adjustments for differences in location, size, topography, or other factors.

It is

inappropriate to simply take five land sales in the Town, without any evidence that they are comparable lots, add an amenity value and divide the value by the number of acres. The market certainly would not recognize such a process and the board has given this method no weight.

Lastly, the board has reviewed the Thompson appraisal, specifically pages 102 through 107 suggested by the Taxpayer. The board does not agree with the Taxpayer's interpretation of Mr. Thompson's report. In this specific section of the report titled "Limited Subdivision Approach - Phase I & II Lots", Mr. Thompson estimated a market value of the eleven remaining vacant lots in Phases I & II. These eleven lots were held under common ownership and Mr. Thompson determined a value of the eleven lots as a whole. His estimated lot value, including a \$10,000 amenity premium, was determined to be \$60,000 per lot which supports the assessed value.

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David Dana, Taxpayer; and Chairman, Selectmen of Dalton.

Date: March 27, 1997

Valerie B. Lanigan, Clerk

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