

Shiretown Realty Trust

v.

Town of Dunbarton

Docket No.: 17540-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessments of: Map C5/Lot 02-03 - \$15,000 (land only - 19 acres); and Map C5/Lot 02-05 - \$6,250 (land only - 7.8 acres) (the "Properties"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) the Properties have no Town-maintained road frontage and are approximately 400 feet off Kimball Pond Road;
- (2) the soil is poor with a muck and peat classification in some areas;

- (3) the Properties were offered for sale to the Town because it abuts the Town forest but the Town never responded to the offer;
- (4) the Properties were placed on the market for \$5,000 - \$6,000 plus back taxes but because they are landlocked, there were no offers; and
- (5) the Town's comparables sold for one-half to one-third of their assessed values, many had access and some had buildings on them.

The Town argued the assessments were proper because:

- (1) based on available land sales at the time of the 1997 revaluation, rear acreage was assessed at \$2,000 per acre and adjusted for size and condition;
- (2) the Properties would have received a "volume" adjustment if both lots had been combined; and
- (3) several land sales support the assessed values.

Board's Rulings

Based on the evidence, the board finds the correct assessment to be \$8,050 for the total combined area for the following reasons: 1) the Town should have assessed the two lots as one property; 2) the lack of any access warrants an adjustment; and 3) the Properties' topographical considerations, including its wetness, should have been adjusted for.

The board finds that although the Taxpayer acquired the Properties as part of a three-tract purchase in a single deed, the two appealed Properties abut one another and should have been assessed as a single entity. The Town testified the Properties did not qualify for a volume discount for their acreage they were described as separate tracts of land. Had they been merged,

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a volume discount would have been applied. The board finds the two abutting tracts should have been considered and assessed by the Town as a single taxable unit. RSA 75:9 and Fearon v. Town of Amherst, 116 N.H. 392, 393-94 (1976).

The second factor the board considered for which an adjustment was warranted was for the Properties' access. The Taxpayer testified, and the Town did not refute, that the Properties have no deeded access as well as no frontage on a Town maintained roadway. As the assessment-record cards for the two tracts state, one Property, Map C5, Lot 2-3, is 500 plus or minus feet from the road and the second Property, Map C5, Lot 2-5, is over 1,000 feet from the road. The board finds this factor is a significant influence on value and there should have been an adjustment applied by the Town. The board finds the Town's inclusion of any access-related problems in its adjustment under the topographical depreciation category, does not adequately address the Properties' remote location. The Property identified as Map C5, Lot 2-3, has access problems that include factors more than just the physical distance from the Property to the roadway. Between the Property and the roadway is the Town forest and in the Town forest is Black Brook. To access the Property from Kimball Pond Road, at its closest proximity to the road, would require some method of crossing Black Brook and the related wetlands. Given the extent of the Properties' access problems, the board finds that it is appropriate to apply a separate adjustment for this factor. Therefore, the board has reduced the Town's \$2,000 per-acre unit by 40% to account for the Properties' access.

Lastly, the board finds an adjustment is warranted for the significant amount of wet and swampy areas on the Properties. Neither the Taxpayer nor the Town's assessor have actually set

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foot upon the Properties and the best evidence submitted was the maps provided by the Taxpayer showing a significant amount of wet areas and changes in elevation. With any development being dependant on a required amount of buildable area, the presence of a significant percentage of wet areas on the Properties would be a determining factor of the buildability of the Properties. The Taxpayer submitted a topographical map and a soils map containing the Properties and

surrounding acreage. While these maps are not done by on-site individual surveys, they do provide some indication of the conditions of the land given the soil types, terrain and presence of wetlands. The board finds the significant area of wetlands indicated on the maps would negatively impact the value of the Properties substantially, and therefore, have applied a 75% reduction in the calculations of the assessed value for this factor.

The Town submitted six sales in support of its assessed values. While the board finds the sales may indicate some consistent methodology, they did not support the assessed value of the Properties. The board reviewed each sale individually as follows.

Sale 1 is the Nichols sale, which occurred in June 1996 and was the transfer of 20 acres of vacant land as listed on the deed for \$6,000 or \$300 per acre. The Town, however, has the land area listed at 13 acres and if the purchase price was \$6,000 for 13 acres, the per-acre price would be \$462. Regardless of which unit value is employed, this sale sold for less than half of its assessed value. The Town classified this tract as backland having no road frontage by itself.

Sale 2 is the Braverman sale which occurred in August 1998 and was the transfer of 20 acres of vacant land for \$5,000 or \$250 per acre. However, this sale is not comparable to the subject inasmuch as it has access by a 20-foot right-of-way.

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Sale 3 is the Beurang sale which was a 1998 transfer of 18.5 acres with improvements. This sale could not be considered comparable to the Properties inasmuch as it is improved and has access.

Sale 4 is the Berard sale which occurred in February 1996 and was the transfer of 40 acres of vacant land for \$5,500 or approximately \$138 per acre. The Town testified this property had access but the quality of the access was unknown.

Sale 5 is the Aubrey sale and consisted of the transfer of buildings and land totaling

approximately 40 acres. Again, this property would not be similar to the Properties due to the fact that it is improved with structures and has access.

Sale 6 is the Warriner sale which was a transfer of 15 acres for \$10,000 or approximately \$667 per acre. While this property was located approximately 800 feet from the road, the assessor testified the grantee is a builder and may have access and assumed that it abuts property already owned by the grantee. This sale would not be comparable to the Properties.

Based on this summary of the Town's sales, the board finds the sales either are not similar to the Properties or those that are generally similar support an assessment revision and abatement. Obviously the sales of improved sites would not be comparable. Of the vacant-land sales, sales #2, #4 and #6 even with access to a town road support a lower value. While the assessor had no knowledge of the access for sale #1, it was obvious from the selling price and the area that the unit value did not support the assessments on the Properties. For these reasons, the board found it necessary to recalculate the Properties' assessment. The board adopted the Town's \$2,000 per-rear-acre initial value as a starting point to determine the Properties'

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assessment. The Town testified the \$2,000 per-acre value was for one perfect acre of rear land. The board found it necessary to make adjustments for the previously discussed factors and calculated the revised assessment for the two tracts considered as one economic unit as follows.

PER ACRE		ACRES	ACCESS	TOPOGRAPHY	ASSESSMENT
\$ 2,000	x	26.8 x.60	x .25	= \$8,040 (rounded to	\$8,050)

If the taxes have been paid, the amount paid on the value in excess of \$8,050 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 1998. 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

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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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Joseph Fiumara, Trustee of Shiretown Realty Trust, Taxpayer; Ralph J. Cutting, Representative for the Town of Dunbarton; and Chairman, Board of Selectmen of Dunbarton.

Date: July 13, 1999

Lynn M. Wheeler, Clerk

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