

Peter W. Spear

v.

Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 79-A:9 and 76:16-a, the "Town's" current-use assessment and proper ad valorem valuation on Map 139/Lot 2/Sub Lot 000A - a 137.8-acre lot with a summer house assessed at \$61,359 (land \$26,559; buildings \$34,800) (the Property).

The Taxpayer also owns but did not appeal the following parcels assessed in current use. Map

139/Lot 3 - a vacant 30-acre lot assessed at \$552; and

Map 139/Lot 2 - a vacant 186.2-acre lot assessed at \$3,855.

For the reasons stated below, the appeals for abatement are granted in part and denied in part.

The Taxpayer has the burden of showing the Town erred in its current-use assessment. See 79-A:9; TAX 206.06. The Taxpayer also has the burden of showing his ad valorem 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 Properties' assessments were higher than the general level of assessment in the municipality. Id.

Page 2

Spear v. Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

Pursuant to board rule TAX 201.21 the board has combined these appeals as they involve the same Taxpayer, Town and same tract of land. At the hearing, the two cases were consolidated for testimony and this decision consolidates the findings in each case. Although the Taxpayer owned three tracts, only the ad valorem assessment and current-use classifications and values for Map 139/Lot 2/Sub lot 000A are at issue.

The Taxpayer argued the Town erred because:

- (1) the Property is being taxed for acreage underneath the Town's right-of-way;
 - (2) the land classified as driveway by the Town (50 feet X 3000 feet) should actually be in current use, divided equally between the appropriate land classifications on either side of the road;
 - (3) the land and house are seasonal in nature (no electricity) and access is poor;
 - (4) the road floods at least once a year and public safety vehicles have no access to the Property;
- and
- (5) the size of the bridge (posted for 6 tons) restricts the use of the Property and repairs that can be made to it.

The Town asked for and was granted leave to not attend the hearing and submitted its position by fax dated November 3, 1999 along with revised assessment-record cards indicating a revised assessment of \$61,059 (land \$26,259; buildings \$34,800).

The Town argued the revisions are correct because:

- (1) the bridge does not have a weight restriction and is used by town trucks for both summer and winter maintenance; the building is accessible by all emergency services;
- (2) road flooding is not a frequent occurrence; and

Page 3

Spear v. Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

(3) the neighborhood is assessed as average and the building is assessed as a camp; the building was given an A2 quality adjustment because it is well maintained and aesthetically pleasing.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not carry his burden to prove the ad valorem assessment on the building and the land not in current use on the parcel was disproportionate or illegal, and therefore, denies the Taxpayer's property tax appeal Docket No.: 17752-98PT. The board also heard Docket No.: 17751-98CU and grants the Taxpayer's current-use appeal. The appeals will be addressed individually.

Docket No.: 17752-98PT

All assessments must be based on market value. RSA 75:1. While the Taxpayer argued the periodic flooding of the road was unpredictable, yet substantial, and the load limit placed on the bridge negatively impacted the value of the camp and the .5 acre that it sits on, he did not present any evidence as to its resulting market value, either through comparable sales or other data. The Taxpayer did estimate the market value at two-thirds of the Town's assessed value. However, the lack of any supporting data does not give the board confidence that this estimation of value is actually the market value for that portion of the Property not in current use. The board also notes that the site's privacy, seclusion and views are offsetting factors to the negative ones presented by the Taxpayer. The board finds the Taxpayer's arguments were not sufficient to meet his burden of proof to show the assessment is incorrect and that the value of the Property is something different than the Town's estimate. Therefore, the ad valorem property tax appeal is denied.

Docket No.: 17751-98CU

The board has reviewed the revised assessment-record card supplied by the Town and

Page 4

Spear v. Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

finds that additional revisions are warranted in several areas. The Taxpayer submitted a diagram delineating the area surrounding the house that should be land not in current use (LNICU) totaling .5 of an acre (104 feet x 208 feet). This area should have been added to the amount of driveway area necessary for the Property to have access from the town-maintained road to the dwelling. Testimony from the Taxpayer estimated this at between 250 and 300 feet. The board has calculated the driveway size at approximately 4,500 square feet (15 feet x 300 feet) equating to approximately .1 of an acre. This area is added to the .5-acre house site for a total area of the LNICU of .6 of an acre.

Therefore, the first line of the assessment-record card should be revised as follows: .6 acre base rate: $\$12,600 \times 1.15 = \$14,500$ (rounded). In this instance, the board has calculated the assessment rate of the LNICU of .6 acre by interpolating between the .5 acre and .75 acre values on the Town's tax land pricing guide¹ in the zone 01 rural classification.

The .4 of an acre that was removed from the primary site should be added to the farm land category.

The Town's revised assessment-record card removed the 4.5 acres previously assessed as a 50 foot by 3,000 foot driveway and added the 4.5 acres to the previous 25.5 acres of farm land giving a revised total area for the farm land category of 30 acres. The Taxpayer argued the 4.5 acres should be totally removed from the parcel reducing the acreage to 133.3 acres. The board

¹This rate was calculated after the board asked for and was sent by the Town, a land pricing guideline dated November 16, 1992, used by the Town to calculate assessments for various fractional lot sizes of less than one acre.

finds the total acreage of the parcel is not definitively known because the parcel has not been surveyed. Further, the Taxpayer testified that the actual acreage of one of the parcels not appealed, Map 139/Lot 2, was determined to be more than the Town's estimate when it was surveyed. Consequently, the board finds the Town's tax map estimate of the parcel's total acreage of 137.8 acres is the best estimate of the Property's size even exclusive of the Chickwolnepy Road area. The board, therefore, has determined based on evidence and testimony that the 4.5 acres the Town had assessed as the driveway should be split equally between the farm land category and the mixed forest category as the road bisects this area. Consequently, the board has taken the 4.5 acres and, for ease of calculation, added 2.3 acres to the mixed forest category and added 2.2 acres to the Town's original farm land acreage resulting in 49.1 acres now in the mixed forest category and 27.7 acres in the farm land classification. To the 27.7 acres in the farm land classification total must be added the .4 acres from the revised primary site for a

total farm land classification of 28.1 acres. These revisions result in adjusted totals for the current-use value of the various categories as follows:

Mixed Forest: $49.1 \text{ acres} \times \$44/\text{acre} = \$2,160$

Farm Land: $28.1 \text{ acres} \times \$200/\text{acre} = \$5,620$

The mixed forest \$44 per-acre value was calculated by dividing the original \$2,059 value by the original 46.8 acres.

The farm land \$200 per-acre value was calculated by dividing the original \$5,100 value

Spear v. Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

by the original 25.5 acres.

The revised assessment is calculated as follows:

R1 21.6 acre \$12,600 x 1.00 x 1.15= \$14,500

Wet 2160 acres 900

Mix 2149.1 acres 2,160

Farm 2128.1 acres 5,620

Extra Features Value 1,200

Depreciated Building Value 33,600

Total Assessment \$57,980

If the taxes have been paid, the amount paid on the value in excess of \$57,980 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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.

Further, within 60 days of the date of this decision, the Town shall file at the Coos County Registrar of Deeds a new current-use lien form (RSA 79-A:5VI) correcting the acreage in current use in keeping with this decision. The Town shall provide a copy or certification of this revised recordation to the board.

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

Page 7

Spear v. Town of Milan

Docket Nos.: 17751-98CU and 17752-98PT

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

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 Peter W. Spear, Taxpayer; and Chairman, Board of Selectmen of Milan.

Date: December 16, 1999

Lynn M. Wheeler, Clerk

0006