

Roy F. and Terri P. Grieder

v.

Town of Henniker

Docket No.: 17871-98PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$406,204 (4.32 acres not in current use (NICU) \$83,300; 38.32 acres in current-use (CU) \$3,104; buildings \$319,800) on a 42.64-acre lot with a single-family home (the "Property"). The Taxpayers also own, but did not appeal: Map 1 Lot 612/B14, a 5.2-acre lot with an assessed value of \$30,100; Map 1 Lot 710/B, a 5.12-acre lot with a CU assessed value of \$138; and Map 1 Lot 701/B3, a 5.11-acre lot with a CU assessed value of \$169. For the reasons stated below, the appeal for abatement is granted to the revised assessment recommended by the Town.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove

disproportionality beyond the revised assessment recommended by the Town.

The Taxpayers argued the assessment was excessive because:

- (1) the house was constructed in 1997, and includes many over improvements that would not be recognized by the market if the Property was sold;
- (2) the Dur house on French Pond was constructed by the same builder, includes many similar quality features, and yet is assessed by the Town at \$71.77 per-square foot, while the Taxpayers' Property is assessed at \$80.39 per-square foot;
- (3) the Taxpayers had an appraisal done for refinancing in October, 1998, which estimated a market value of \$431,000; and
- (4) the view factor assigned to the building site is excessive, and results in a value in excess of other properties with views.

In summary, the Taxpayers argued the assessment should be abated by reducing the site value to \$50,000, and recalculating the residence using the same square-foot price as used in assessing the Dur property.

The Town recommended correcting the acreage and building description and revising the assessment to \$395,943 (\$81,600 for 2.15 acres NICU; \$3,143 for 38.8 acres in CU; and \$311,200 for the dwelling). The Town argued the revised assessment was proper because:

- (1) the methodology used to assess the site was consistent with that established during the 1996 reassessment;
- (2) the view and privacy afforded by the site, offset slightly by its long access, justify the site factor and value;

(3) the Town recognized the dwelling contained some over improvements by not assessing it at the total construction cost of \$414,423; and

(4) the per-square-foot price of the Dur dwelling is less because it was determined to be of a slightly lower quality (primarily due to its exterior finish quality) and because it is larger.

The day following the hearing, the board viewed the interior and exterior of the Property and viewed several of the comparables submitted by the parties. Due to the inclement weather, the board was unable to observe the view from the Property, or any other views of the comparables, but did note the general topography and clearing associated with the Property.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden to prove the assessment was excessive and disproportional. The board finds the Town reasonably supported its methodology and its conclusion of value. Further, neither party challenged the Department of Revenue Administration's equalization ratio for the Town of Henniker of 97% for the 1998 tax year. Thus, the board finds the Town's 1998 general level of assessment to be 97%.

The board will address the two major components of the assessment (the site value and the dwelling replacement cost) and arguments raised by the Taxpayers in further detail.

Site Value

Of the total revised acreage (40.95 acres), 2.15 acres comprised the area NICU land. As of April 1, 1998, the 2.15 acres consisted of: a) a .78-acre area encompassing the extension of Longwood Drive that had been constructed, but not accepted by the Town at that time; b) a .48-acre Plummer Hill Road extension; c) the paved driveway accessing the Taxpayers' building site; and d) the building site itself. The assessment of the primary building site includes a

consideration for the site improvements such as the well and septic, clearing, and site preparation for the dwelling.

Despite the board not being able to see the view during its inspection of the Property, the board finds the Town's view factor, adjusted by 10% for the long access, is reasonable given the view described by the parties from the site, the extensive site preparation, driveway and the well and septic values inherent in the site value. The board viewed several of the lots on Plummer Hill Road that had assessed values approaching \$40,000, and finds the Taxpayers' site has significantly greater view potential than those sites. Further, the assessed values of the Plummer Hill Road sites include a 30% adjustment for the fact that they were undeveloped lots, i.e., without any site work such as driveways, wells or septic. Indeed, the Taxpayers' site may be one of the highest values in the area, but based on the board's review of the neighborhood, it is one of the more exceptional sites in the neighborhood. On its view, the board also reviewed the neighborhood to determine whether Henniker lacked the "cachet" of Bow or Hopkinton (two of the towns from which comparable sales in the Taxpayers' appraisal were drawn) as suggested by the Taxpayers. The board concluded this would not be a significant issue. While Bow and Hopkinton may generally have more prestigious housing than Henniker, the Taxpayers' Property is quite proximate to Hopkinton, in a neighborhood of generally good-quality housing and reasonably close to the Hopkinton-Everett Reservoir Project, which entails significant open space.

Dwelling Replacement Cost

Based on the evidence at the hearing, the descriptions contained on the assessment-record cards, the board's interior and exterior view of the Taxpayers' Property and the exterior view of

the Dur property, the board finds the Town's approximately 8% difference in grade (Taxpayers' grade factor of 2.28 ÷ the Dur grade factor of 2.11) between the Dur property and the Taxpayers' Property is appropriate. Further, the board finds the Town's grading and application of a 10% obsolescence for the Property's overbuilt condition results in a depreciated building value of \$302,800, significantly less than the actual building costs incurred by the Taxpayers (even if the cost for the septic system is deducted). Further increasing the per-square-foot price of the Taxpayers' Property is its smaller size (more than 400 square feet less than the Dur property). Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates a higher per-square-foot cost for smaller dwellings than for larger dwellings, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon. Further, the Town testified the Property's assessment (in particular, the building per-square-foot price) was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers also argued the Town's revised assessed value was in excess of what the Property would bring if placed on the market. However, the Taxpayer submitted no market data to support their assertions. (In fact, the Taxpayers' refinancing appraisal (which, based on the board's experience, are generally conservative) valued the Property the same as the Town's equalized assessment (ad valorem assessment \$418,400 ÷ .97 = \$431,340).) The board, during its view, observed the neighborhood and found it to be a generally rural, residential

neighborhood, with a mixture of new and old, average-to-above-average quality dwellings. The board finds the neighborhood would not be a deterrent in marketing the Taxpayers' high-quality Property.

In short, while the Taxpayers' Property is likely the best in the neighborhood, the Town recognizes the over improvements of the Property in its assessment. The board concludes the resulting assessed value is a reasonable estimate of the Property's market value, thus, it is a reasonable basis for its assessed value.

If the taxes have been paid, the amount paid on the value in excess of \$395,943 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(f), unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1999. 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(a). 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(f). 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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to R. Peter Shapiro, Esq., Counsel for Roy F. and Terri P. Grieder, Taxpayers; and Chairman, Board of Selectmen of Henniker.

Date: May 10, 2000

Lynn M. Wheeler, Clerk

0006