

Alfred Sweeney

v.

Town of Unity

Docket No.: 18351-99PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1999 assessment of \$49,300 on Lot 16-624, a 57-acre vacant lot, and \$43,400 on Lot 16-625, a 28-acre lot improved with a well and septic (collectively, the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 38 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the assessments on the Property were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Property was acquired by the Taxpayer in 1967 as one parcel of 85 acres;
- (2) a Town road divides the original parcel into two lots and, approximately 25 years ago, the

Town decided to start taxing each lot separately, which is not proper since these lots cannot be conveyed separately due to subdivision regulations;

(3) the actual acreage subject to an assessment in 1999 was substantially less than 85 acres because of a boundary dispute with an abutting land owner, which resulted in a reduction of approximately 8 to 10 acres;

(4) the Town damaged certain “historic” stone walls situated on the Property, reducing the value of the land; and

(5) comparable sales support a market value of \$50,000, much lower than the Town’s assessment.

The Town argued the assessments were proper because:

(1) the Town underwent a revaluation in 1992 and, in that same year, adjusted the assessed values after being requested to do so by the Taxpayer;

(2) at that time, and consistently since then, the Town has treated the Property as two lots for tax purposes;

(3) a further adjustment to the total assessed value was made as of April 1, 1999 because the house and barn burned down on February 26 of that year;

(4) the Town has the authority to tax each lot separately because the road bisects the Property into 57 and 28 acres;

(5) the Town’s subdivision regulations do not preclude the Taxpayer from applying to subdivide the Property into two or more saleable lots and the Property has sufficient frontage and other

attributes to permit no less than 14 lots; and

(6) the Taxpayer has failed to meet his burden of proving the Property was disproportionately assessed.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry his burden of proving that the Property was disproportionately assessed. The board details its findings relative to a number of the Taxpayer's arguments as follows.

Separate Tracts

The Taxpayer and the Town dispute whether the Town has the authority to tax the property as two separate lots rather than as a unified whole. RSA 75:9 confers such authority, as follows:

75:9 Separate Tracts. Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674:39-a.

While the two lots in this case are contiguous, they are bisected by a Town road ("Straw Road"). The testimony at the hearing indicated the lots had been assessed separately for approximately 25 years. The Taxpayer did not appeal the issue of a separate assessment of each lot until 1999.

Whether, under the statute, tracts "are situated so as to become separate estates" for the

purpose of appraisal “is a matter to be determined from all the facts and circumstances of each case.” Fearon v. Town of Amherst, 116 N.H. 392, 393 (1976); accord, Appeal of Loudon Road Realty Trust, 128 N.H. 624, 627-28 (1986). In Loudon, the court noted “there must be good reason to support a unitary assessment,” such as “evidence that the zoning ordinance would legally preclude subdivision into two parcels.” Id. No such evidence exists in this case.

The Taxpayer asserted the deed listed the Property as one tract of 85 acres with public highway rights (presumably for Straw Road) being reserved. He contended that, under the Town’s subdivision regulations, each lot could not be separately transferred without an approved subdivision. The Taxpayer submitted an excerpted letter from Attorney Robert V. Johnson, II (Taxpayer Exhibit 1) to support his contention. He also submitted a copy of Section 6.42 of the Town’s 1999 Subdivision Regulations (Taxpayer Exhibit 8) which addresses the definition and necessity of subdivisions.

Section 6.42, as written, contains a specific exception where a lot “is described in one deed as one parcel with a street bisecting the parcel.”¹ In this situation, the parcel “is one lot of record unless each piece of property bisected by the street conforms with the minimum lot size and street frontage requirements.” The Town testified that given the large amount of acreage and the frontage on both sides of the road there is no question that the lots on both sides of the street exceed the Town’s minimum lot size and street frontage requirements.² Notwithstanding this language, however, the Town’s representatives stated its practice is to require owners of

¹ Section 6.36 of the Subdivision Regulations defines “street” quite broadly to include “any State or Town highway . . . and/or any other way which exists for vehicular travel, exclusive of a driveway.”

² In fact, the Town’s representatives suggested there may be enough acreage and frontage to permit 14 lots on the Property.

parcels bisected by a street to apply formally for a subdivision, even though the review process is, in such cases, quite minimal and easily complied with.

The board agrees with the Town's conclusion the two lots can be assessed separately under RSA 75:8, but must disagree with the Town's interpretation of its own regulations to the extent it insists a formal, even if 'minimal,' approval process for a subdivision would still be required before each of the two lots bisected by the street can be sold separately. This is true because "[t]he interpretation of municipal subdivision regulations is a question of law" and an incorrect interpretation of those regulations is given no weight. See Bussiere v. Roberge, 142 N.H. 905, 908-09 (1998) (interpreting Manchester subdivision regulation to exclude application to planned conversion of apartment building into condominiums): "Where 'subdivision' is defined by regulation more restrictively or narrowly than it is by statute, the regulation's definition governs"; quoting Dearborn v. Town of Milford, 120 N.H. 82, 84 (1980) ("Certainly, a town may, through adoption of an ordinance, choose to exercise less power than that granted by the State legislature.").³

³ In Dearborn, supra at 84-85, the definition of subdivision in the municipal ordinance was less restrictive than the state statute, and the town was therefore required to permit a mobile home park without "subdivision approval."

In this case, the board reads the exception contained in the Town's subdivision regulations, which applies when a parcel is bisected by a street and each lot has sufficient minimum lot size and street frontage, to be "plain and unambiguous."⁴ The board finds the testimony of the Town's representatives to be in conflict with its regulation; in fact, they testified they were uncertain as to why the Town's practice deviated from the printed language. Further, while the board considered the excerpted letter from the Johnson law office (Taxpayer Exhibit 1), the board finds inadequate support for the legal opinion it expresses. In particular, this letter makes no reference to RSA 75:9, the Town's subdivision regulations or any land use planning statutes in support of the opinion. For these reasons, the board concludes the Town's separate description and assessment of the two lots is appropriate and in accordance with RSA 75:9.

Total Acreage

The Town assessed the Property as having a total of 85 acres. The Taxpayer's deed (Taxpayer Exhibit 9) indicates that the Property contained 85 acres, more or less. The Taxpayer asserted, however, based on a submission of a portion of a survey performed on an abutter's (Johnson) property (second page of Taxpayer Exhibit 4), the acreage on the north side of Straw Road has been reduced. Further, Taxpayer Exhibit 11 was submitted and contains a deposition

⁴ "[T]he words and phrases of a [regulation] should always be construed according to the common and approved usage of the language." See Lemm Development Corporation v. Town of Bartlett, 133 N.H. 618, 620 (1990) quoting Dover Professional Fire Officers Assoc. v. City of Dover, 124 N.H. 165, 169 (1983).

by the Taxpayer recorded at the registry of deeds and attached correspondence stating

his beliefs regarding this boundary line dispute. The Town stated it was unaware of the survey that was part of Exhibit 4 or of any acreage discrepancy as a result of the submitted survey.

There indeed appears to be a dispute as to one portion of the Taxpayer's boundary with the Johnson property. However, based on the incomplete evidence submitted and the lack of resolution of any dispute, the board is unable to find the Town's assessed acreage is incorrect. Further, even if the Taxpayer's acreage is less than the deed states and as the Town tax maps indicate, the Taxpayer did not submit evidence showing whether the reduction in acreage had a measurable effect on the Property's market value. The board notes the area in contention is not on Straw Road but appears to be rear acreage along the northeast boundary of the lot located on the north side of Straw Road. Therefore, any effect on value would be less than if it involved acreage having direct access on the road. Consequently, the board is unable to find the acreage assessed to the Taxpayer is incorrect or, if different, how this would have had a measurable effect on market value.

Stone Walls

The Taxpayer argued the Town's destruction of stone walls on a portion of his Property during reconstruction of the road diminishes the value of the Property and, thus, should lower his assessment. The Town argued the presence or absence of stone walls is not a factor that affected the assessing of property based on the methodology utilized by the Town.

Because the Town's assessment methodology did not include stone walls as a valuation factor, the board finds any loss of stone walls is not a basis upon which to grant an abatement.

Taxpayer's Comparables

The Taxpayer submitted three recent sales from which he estimated a \$50,000 market value for his Property: 1) the "Bellimer" sale (Map 16, Lot 740) - 70 acres sold on December 3, 1998 for \$50,000; 2) the "For-Trucks Inc." sale (Map 6, Lot 109) - 280 acres sold on October 15, 1996 for \$110,000; and 3) the "Bourque" sale (Map 13, Lot 714) - 89.1 acres sold on April 6, 2000 for \$65,500.

The board finds these sales differ in a number of ways from the Taxpayer's Property and, thus, are not conclusive evidence of market value for the Property.

First, the Bellimer sale (a portion of which abuts the Property) at the time of the sale had a narrow portion of land that abutted Unity Road, but the majority of the acreage was on the rear side of the Little Sugar River. As the Town testified, the purchaser, Mr. Bellimer, owns an abutting residential property, and was able to annex the less accessible portion of this parcel on the south side of the Sugar River to his residential lot and transferred the remaining portion that fronted on the Unity Road to his son. While the Sugar River may be seen as a positive attribute, the configuration of this lot and the inaccessibility of the majority of the land (except to an abutter such as the purchaser) is significantly different than the Property. The Property fronts on both the north and south sides of Straw Road and has much better access to its acreage than the Bellimer sale.

Second, the For-Trucks Inc. sale has 280 acres with roughly 1,000 feet of frontage. This is significantly more acreage than the Taxpayer and has, proportionally, less frontage corresponding with that acreage. No testimony was submitted as to the quality of the land other

than the general assessment notations on the assessment-record card. The Town did note on the assessment-record card, and made adjustments for, the rear land being separated by the Little Sugar River.

Third, the Bourque sale for 89 acres, while of similar size, appears to have no direct road frontage based on the assessment-record card. Further, the Bourque land was classified as poor and wet and, consequently, appears to be of inferior quality and accessibility when compared to the Taxpayer's Property.

Thus, the board finds the sales submitted by the Taxpayer are not comparable and do not provide a good indication of the market value of the Property.

In conclusion, the board has carefully considered the Taxpayer's arguments and the Town's responses and concludes the Taxpayer did not prove the Town's assessment was disproportionate. Therefore, the board denies the appeal.

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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Alfred Sweeney, Taxpayer; and Chairman, Selectmen of Unity.

Date: September 26, 2001

Lisa M. Moquin, Clerk