

Robert G. Edwards, Sr. Trust

v.

Town of Pelham

Docket No.: 18662-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$130,200 (land \$29,400; improvements \$100,800) on Lot 008-41-001, a 2.06-acre lot with a duplex (the “Property”). The Taxpayer also owns, but did not appeal, Lot 008-041-A assessed for \$137,600; Lot 008-041-B, assessed for \$25,200; and Lot 013-141, assessed for \$86,000. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was 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, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the abutting Gendron hazardous waste site has encroached onto the Property, contaminating a portion of it;
- (2) a section of Island Pond Brook, separating the Property from the Gendron site has been found to be contaminated;
- (3) on the assessment date (April 1, 2000) the state was providing potable water to the Property due to questions surrounding the quality of the well water; and
- (4) the Property does not have its own water supply but rather shares the well that services the farmhouse on an adjoining parcel (Lot 8-41-A). The ability to sell the Property is questionable as it may or may not be possible to locate a new, uncontaminated well near the duplex to supply it with water.

The Town argued the assessment was proper because:

- (1) the Property has an uncontaminated water supply, substantially different than the abutting Altomare property which had a similar tax appeal decided before the board (Altomare v. Pelham, Docket No.: 17415-97PT);
- (2) there have been no surveys or definitive answers provided to the Town as to what land area, if any, has been lost due to the encroachment of the contaminated site onto the Property;
- (3) no documentation has been provided that shows conventional financing is not available for the Property; and
- (4) the Taxpayer's appraiser's -50% adjustment estimate for the effect of the contamination seems high and the appraiser was not at the hearing and available for questioning.

Ordinarily, when a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the

assessments on the taxpayer's nonappealed properties in the same municipality. Appeal of the Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant."). However, in this case, both parties stipulated the assessments of the non-appealed properties were proportional, and thus, the board's decision focuses on the appealed property.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$123,200 (land \$22,300; improvements \$100,900).

The board finds, in this instance, the Town adequately addressed the effect of the contamination on the improvements, and therefore, does not adjust the depreciation factor associated with that portion of the assessment. The board, however, finds it necessary to adjust the site value to more accurately reflect the questions and issues associated with the encroachment of hazardous waste onto the Property, the effect of the contamination of the brook which abuts the Property and is part of the boundary between the Gendron site and the Property, as well as the effect of the contamination in the wetlands area which the Taxpayer testified was between the brook and the Property's improvements. Further, the Taxpayer testified the state was providing the Property with a potable water supply on April 1, 2000, due to the presence of the contamination and questions surrounding it. The well that services the Property is located on the Taxpayer's abutting farmhouse property and did not show any contamination. However, it is not unreasonable to expect someone wishing to purchase the Property separately (which is

located closer to the contamination) from the Taxpayer's farmhouse property would need to provide a separate water supply for the Property. The risk associated with finding a suitable water supply for the Property has not been adequately accounted for by the Town. To recognize this risk, the board has applied a -40% adjustment to the land area instead of the -20% adjustment used by the Town. The board is aware that the Altomare and Raza properties, which both abut the Property, received a 50% reduction to their land assessments. However, because the Property did not have contamination in its shared well as the Altomare property did, the board finds the adjustment should be smaller. The -40% adjustment encompasses not only the risk involved in locating a potable water supply but also recognizes the Property may not readily sell due to the unavailability of conventional financing. It has been the board's experience¹ that lending institutions do not want to provide financing on properties associated with known contamination.

In Exhibit No. 1, the Taxpayer supplied the board with copies of various correspondence stating the Environmental Protection Agency ("EPA") and the New Hampshire Department of Environmental Services ("NHDES") were involved in a site review of the Gendron Junkyard and abutting properties. In the November 13, 2000 Haley and Aldrich letter to Finis E. Williams, III,

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).

Esq., as well as in the February 19, 2001 Crafts Appraisal Associates Ltd. correspondence, the Property's value and adjustments for the impact of the contamination are outlined. The board finds these and other similar mentions of the Property in Exhibit No. 1 are evidence that the Gendron hazardous waste site had encroached onto the Property in various ways, physically, through the dumping of shredded materials and beneath the surface through the leaching of contaminants into the soil and groundwater. In addition, the law suit (adverse possession claim) filed in superior court (and settled) by the owners of the contaminated property is some evidence, or could be construed as such, that the Property had been encroached upon.

Based on its experience, the board finds the sum of the evidence indicates the Property has been negatively impacted by the presence of the junkyard site and the contamination to an extent greater than that accounted for by the Town's -20% adjustment. The board finds the -40% adjustment made to the land area more accurately reflects the condition of the Property and its value.

Therefore, the Town shall adjust the assessment-record card, as follows: "I" factor of the land line valuation section becomes .60; adjusted unit price .45; and land value \$19,600 (plus excess land assessment of \$2,700 for a revised total land assessment of \$22,300).

The Town testified it relied only on state documents that were available at the time of the assessment and that, had other information been available, it may have considered that additional information and adjusted the assessment, if appropriate. Based on all the information presently available, the board finds the Property's assessment warranted further adjustment.

If the taxes have been paid, the amount paid on the value in excess of \$123,200 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 2001 and 2002. 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 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

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I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Robert G. Edwards, Sr., Taxpayer; and Chairman, Selectmen of Pelham.

Date: December 17, 2002

Anne M. Bourque, Deputy Clerk

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