

Gary Lang

v.

Town of Troy

Docket No.: 18673-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the following 2000 assessments:

ad valorem assessment of \$16,400 on Map 29, Lot 3B, a 7.0-acre vacant lot;
current-use assessment of \$7,280 on Map 31, Lot 10, a 70.0-acre vacant lot;
ad valorem and current-use assessment of \$9,755 on Map 32, Lot 2C, a 10.08-acre vacant lot; and
ad valorem assessment of \$21,700 on Map 33, Lot 3, a 37.0-acre vacant lot (the “Properties”).

The Taxpayer also owns, but did not appeal, Map 32, Lot 2A, a 16.21-acre lot partially assessed in current use with a metal shed and Map 33, Lot 2, a 14.0-acre vacant lot in current use. 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 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, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show 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:

Map 29 Lot 3B

- 1) the lot is assessed as if buildable but is only rear land on the back side of a brook, with 175 feet of low land on both sides of the brook, and its access is through an abutting lot;
- 2) to access the buildable portion of the lot, a road would need to be built, a bridge would have to be built over the brook and electricity would have to be brought in; and
- 3) comparable properties, which also have limited access across a brook, are assessed as rear land by the Town.

Map 31 Lot 10

- 1) the lot is all in current use, yet the ad valorem assessment is too high; if some acreage is removed from current use, the land-use-change tax would be excessive;
- 2) the lot was purchased in 1999 for \$12,000 and the access (over Dwinell Road) is unuseable as it is completely treed; the road used by the previous owner for timber removal was for a one-time use and is not a public way; and
- 3) comparable properties are not assessed similarly.

Map 32 Lot 2C

- 1) the lot has similar restrictions as Map 29, Lot 3B, requiring road development, a bridge and utilities; and

2) comparable properties are assessed as rear land.

Map 33 Lot 3

- 1) the lot cannot be built upon or subdivided because there is no access on a town road; and
- 2) the land is all back land off a Class VI (Dwinnel Road) road.

The Town argued the following:

Map 29 Lot 3B

- 1) considering the cost to develop the lot, the Town would recommend some cost to cure; and
- 2) the Taxpayer's comparables do not have known access and, thus, are assessed as back land.

Map 31 Lot 10

- 1) the lot is subject to gates and bars but is accessible; and
- 2) the lot is assessed at current-use rates based on current-use guidelines with some adjustments for topography.

Map 32 Lot 2C

- 1) based on the evidence, the Town recommends an adjustment from neighborhood "B" to "D" with a 20% adjustment for undeveloped and 45% adjustment for cost to develop.

Map 33 Lot 3

- 1) the neighborhood code is "A" which denotes footpath access to the parcel and results in a 40% reduction in the primary lot value;
- 2) the methodology is the same as Map 33, Lot 2 which the Taxpayer did not appeal; and
- 3) the Taxpayer recently purchased two lots (Map 33, Lots 6 and 8) which were assessed using the same methodology applied to Map 33, Lot 3.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as follows.

Map 29 Lot 3B

This lot is comprised of seven acres with an ad valorem assessment of \$16,400. As the Taxpayer testified, the developable portion of the lot is 2,400 feet from a public road and beyond a brook and wet area that would require substantial costs in installing a long driveway, bridging the wet area and having power run to the site. The Town's assessment did not adequately account for those factors in its site adjustments. At the hearing, the Town recommended a change to the condition factor from .65 to .30 to recognize those factors. The board finds the resulting \$10,800 assessment is a reasonable estimate of the market value of the lot given its difficulties.

Map 31 Lot 10

The Taxpayer argued the ad valorem value was excessive for several reasons and expressed a concern about the Town's reliance on such value if the lot was subject to an RSA 79-A:7 land-use-change tax in the future. Consistent with previous decisions, the board declines to rule on any ad valorem assessment of a property that has been assessed in current use pursuant to RSA 79-A:5. Both RSA 76:16 and 16-a require that for an abatement to be granted, "a person [must be] aggrieved by the assessment of a tax" Here the Taxpayer was taxed on the current-use assessment of \$7,280, not the ad valorem assessment of \$57,000, and thus, he is not aggrieved by the ad valorem assessment. If, at some time in the future, a land-use-change tax is assessed based on the ad valorem assessment, the Taxpayer then has the right to appeal that assessment pursuant to RSA 79-A:10.

Generally, however, the board would encourage the Town to make sure it is

knowledgeable of all factors that could affect market value when estimating the ad valorem assessment of properties in current use so that, if the property is sold, a meaningful analysis can be done of the ad valorem assessment and the sale price for RSA 21-J:3, XIII equalization purposes. See also RSA 79-A:7, III (ad valorem valuation can be used as basis for RSA 79-A:7 land-use-change tax when land is of “nonuniform value” or when “full value assessment . . . [is not] readily available.”)

Map 32 Lot 2C

This lot is comprised of 10.08 acres, one acre assessed at ad valorem (having been retained out of current use when the lot was placed in current use in 1993) and 9.08 acres assessed in current use. Given the board’s ruling in Map 31, Lot 10, our findings will focus on the ad valorem assessment of the one acre. As the Taxpayer testified and as the tax map indicates (Municipality Exhibit A), the buildable area of this lot lies 2,400 feet from a public road requiring, as it did for Map 29, Lot 3B, substantial driveway and utility installation costs. This lot, however, does not have as substantial a brook and wet area to cross to access the site as Map 29, Lot 3B does. At the hearing, the Town acknowledged these factors and recommended a reduction in the condition factor from .80 to .45. The Town also noted a correction should be made to the road factor (from .70 to .90) to reflect that the frontage and access is from the paved portion of Richmond Road rather than the gravel section. These revisions result in an ad valorem value for the one-acre site of \$6,500. This value, which reflects the right to build on the lot and the distance of that site from Richmond Road, is reasonable and consistent with the board’s findings of Map 29, Lot 3B. Adding the current-use value of \$755 results in a revised total assessment of \$7,255.

At the hearing, the Taxpayer acknowledged that a map delineating the one acre reserved out of current use was not submitted to the Town at the time of the 1993 current-use application. As noted on the current-use application form (Form A-10) and required by current-use rules (CUB 302.01 (d)), a map depicting the entire lot and the location and configuration of the one acre reserved from current use should have accompanied the application. To cure this important omission, that will at some point in the future be critical when the lot is developed, the Taxpayer shall, within 30 days of the clerk's date on this decision, submit a map to the Town in compliance with CUB 302.01 (d), copying the board.¹

Further, to the extent the lack of accurate current-use maps is systemic and not isolated to this case, the Town should solicit such maps from the current owners of current-use properties between now and 2004, the year the Town of Troy is scheduled for RSA 21-J:11-a certification by the department of revenue administration ("DRA"). By a copy of this order to the DRA, the DRA shall ensure the Town improves its current-use records as part of its 2004 certification review.

Map 33 Lot 3

This lot is comprised of 37.0 acres with an ad valorem assessed value of \$21,700. The lot is accessed via two private right-of-ways from Mackey and Dwinell Roads, both class VI

¹ Also, if there is an inadequate current-use map for Map 32, Lot 2A, one of the non-appealed lots, the Taxpayer shall submit a proper map for that lot also within 30 days of this decision.

roads. To determine if an abatement of this lot is warranted, the board reviewed: 1) the Town's assessment methodology for lots with similar circuitous access; 2) the Town's land assessment adjustments (Municipality Exhibit B); and 3) the April 2000 purchase by the Taxpayer for \$9,000 from Carol S. Matson of two nearby tracts (identified as Map 33, Lots 6 and 8) totaling 27.0 acres with slightly better access. The board agrees with the Town that the Taxpayer's recent purchase of two nearby tracts may not meet all the requirements of an arm's-length transaction due to the testimony that Ms. Matson was motivated to contact the Taxpayer and sell the property due to the increased taxes as a result of the tax year 2000 reassessment.

Nonetheless, the board finds the very circuitous route and limited market for such a remote parcel (Map 33, Lot 3) warrants a greater adjustment on the 2.0-acre "site" valuation. The board has increased the factor from .80 (which was the factor used in the Matson lots which have better access) to .60 for the difficult access. This adjustment results in a revised assessment of \$19,600.

If the taxes have been paid, the amounts paid on the values in excess of the above 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. 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

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Gary Lang, Taxpayer; Chairman, Selectmen of Troy; and Director Robert M. Boley, Community Services Division, Department of Revenue Administration.

Date: December 6, 2002

Anne M. Bourque, Deputy Clerk