

Dorothy Shovan Trust

v.

Town of New London

Docket No.: 19748-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2002 assessment of \$76,300 (land \$71,500; buildings \$4,800) on a 1,300-square foot lot with a dock (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 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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) due to the Property’s small area (0.03 acres), the assessment should not exceed \$20,000; and
- (2) the dock’s assessment is disproportionate when compared to other docks on Little Lake Sunapee and should be reduced to \$1,200.

The Town argued the assessment was proper because:

- (1) the Property is a legal, separately transferable tract of land;
- (2) the Property is used to provide water access for another, separate tract of land across the street owned by the Taxpayer;
- (3) the Property could be sold to another party to provide water access;
- (4) the Property is a “grandfathered” lot enabling the Taxpayer to reconstruct a new dock in the footprint of the old dock at the same location; and
- (5) the Property could be combined with the lot across the street and sold as a single economic unit which arguably is its highest and best use.

Board’s Rulings

The board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Assessments must be based on market value. RSA 75:1.

The Taxpayer valued the Property using two approaches. In the first instance, the Taxpayer contends the appropriate value for the Property’s 0.03 acres should not exceed \$12,600 based on the fact the average price per acre of lakefront comparable properties located within one half mile of the Property is \$420,000 ($\$420,000 \text{ per acre} \times 0.03 \text{ acres} = \$12,600$).

Alternatively, the Taxpayer calculates the Property’s value at \$26,000 using \$868,000 as the average price per acre for small, lakefront lots without a residential dwelling ($\$868,000 \text{ per acre} \times 0.03 \text{ acres} = \$26,000$). Using these two values as bookends for the range of value for the Property, the Taxpayer argues the value of the Property should not exceed \$20,000. The board finds the Taxpayer’s arguments to be without support in basic assessment or appraisal methodology. Due to the economy of scale, unit values vary according to the size of the overall

property in an inverse relationship. More succinctly, smaller sized properties have higher unit values. To value the land using a straight line relationship, as argued by the Taxpayer, is not in keeping with market principles and would result in a disproportionate assessment.

The Taxpayer's argument that the dock was overassessed due to its poor condition in comparison to some other docks on the lake is not controlling in this instance. The ability to have a dock on the Property, as well as the fact the dock currently in place could be rebuilt with new materials in the same spot because it is "grandfathered," is a real estate right greater than the dock itself that adds value to the Property. The Taxpayer has the right to access the lake over the Property, construct a dock and control the growth of vegetation on the Property. These rights contribute to the value of the Property and are rights any potential purchaser would recognize and want to acquire.

As the Town noted, the Taxpayer also owned an improved lot, identified as Lot 9, across the street from the Property. The Town argued the highest and best use of the two tracts was as a single economic unit and that they should be valued as such although they are legally separate lots that could transfer individually. The Town testified the Taxpayer's control of the Property adds value to the improved lot on the opposite side of the roadway and the two lots would mostly likely be transferred together. The Town provided a sales comparison approach analysis and grid in Municipality Exhibit A that estimated the combined value of the Property and Lot 9 at \$260,000. The Town did not allocate the total value between the two lots. In its analysis the Town used a sale (Comparable Sale #1 in Municipality Exhibit A) that was very similar to the Taxpayer's two properties as the sale included a house on one side of the road with a narrow strip of waterfront land across the roadway. The board finds the Town's use of this sale to be some evidence the Town recognized and captured the value of the Property in its analysis.

The Taxpayer provided no evidence of the Property's market value supported by any analysis that utilized a valid, acceptable assessment or appraisal methodology.

For these reasons, the board finds the Taxpayer failed to carry its burden of proof and, therefore, the appeal is denied.

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(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

Page 5 of 9

Dorothy Shovan Trust v. Town of New London

Docket No.: 19748-02PT

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Dorothy Shovan Trust, Dorothy G. Shovan, Trustee, 788 Little Sunapee Road, New London, New Hampshire 03257, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire 03257.

Date: June 29, 2005

Anne M. Stelmach, Clerk

Dorothy Shovan Trust

v.

Town of New London

Docket No.: 19748-02PT

ORDER

This order addresses the “Taxpayer’s” July 26, 2005 motion for rehearing (“Motion”) which the board denies for the following reasons. The board will address the Taxpayer’s objections as summarized in each of the numbered paragraphs of the Motion.

I. The Board erred to conclude that RSA 75:9 permits unitary assessment of Lot 3 (an appealed tract of land) and Lot 9 (an unappealed tract of land) despite the fact that two properties were historically not a part of the same estate, were acquired six years apart from different owners, can be transferred by two separate deeds, and are not contiguous but divided by a state highway.

Despite the fact that Lot 3, the appealed parcel, and Lot 9, the nonappealed parcel improved with a cottage, were acquired at different times from different entities, and thus, can be transferred separately, it is appropriate for the board to conclude that their highest and best use is as one economic unit, and thus, should be valued that way. All properties must be assessed at their full and true value (RSA 75:1) and to do so must be valued at their highest and best use. 590 Realty Co., Ltd. v. City of Keene 122 N.H. 284, 285 (1982). As the board found in the June 29, 2005 decision (“Decision”), Lots 3 and 9 are both benefited by remaining in the same ownership to

maximize the use and enjoyment of the cottage on Lot 9 by the control of the waterfront property (Lot 3) that is on the other side of Little Sunapee Road. As established in Appeal of Loudon Road Realty Trust, 128 NH. 624, 628 (1986), the determination of the “unitary assessment” of two lots is very fact specific and the assessors and the board are given latitude in their determinations as long as the facts support their conclusions. The ability for the Taxpayer to maintain the dock and control the vegetation and use on Lot 3 in front of the nonappealed improved Lot 9 benefits Lot 9 significantly. If Lot 3 were to be sold separately, the owner of Lot 9 would no longer have the water access, view and privacy that ownership of Lot 3 provides. Thus, the board’s conclusion that Lot 3’s highest and best use is to be considered as one estate with Lot 9 is supported by the facts and the Taxpayer’s case law cited in the Motion.

II. The Board’s conclusion that the purported underassessment of Lot 9 was “recaptured” by the Town in the assessment of Lot 3 was not supported by the presented record.

The Decision makes no distinct finding that the nonappealed lot, Lot 9, was underassessed. The Decision simply makes a finding that the Town’s total assessment of the two lots was not shown to be excessive, and thus, under Appeal of Town of Sunapee, 126 N.H. 214 (1985), no abatement is warranted for the appealed lot, Lot 3.

III. Unbuildable Lot 3 was disproportionately assessed because the Town illegally placed the same high market value on unbuildable waterfront lots as it did on developed waterfront lots.

While not extensively argued at hearing, and thus, not specifically addressed in the Decision, the board’s review of the Taxpayer’s assessment-record cards and the various comparable assessment-record cards submitted with the Motion indicates Lot 3’s assessed value (both before the Town’s abatement to the appealed assessment and the appealed assessment of \$76,300) reflects multiple factors including one for the undeveloped and unbuildable nature of the

waterfront lot. Other assessment-record cards indicate that lots with full development potential and frontage on Little Sunapee Lake had a factor of 4.00 applied to the base residential lot value. The Taxpayer's appealed Lot 3, before the Town's abatement, had a factor of 1.70 and, after the abatement, a factor of 0.50 for the 2002 tax year under appeal. Thus, the Town's assessment methodology does account for differences in lots based on their utility.

The Taxpayer questioned the board's finding relative to the existing grandfathered dock and its poor condition. As the Decision noted, its relative comparison to other docks is not controlling in determining whether the assessment is proportionate. The Decision noted the \$4,800 assessment allocated to the dock is not an excessive value and that it captures more than just the physical tangible features of the dock and includes the intangible grandfathered right to have a dock and rebuild it in a similar configuration. See generally RSA 21:21 (the definition of real estate includes all tangible or intangible interests in real estate).

IV. Pursuant to RSA 76:17-c, this abatement appeal should affect future years.

The board finds the Taxpayer's argument that RSA 76:17-c should apply to the Town's abatement in subsequent years is misplaced. RSA 76:17-c relates to the effect of a board or superior court ordered abatement on its application to subsequent years. The Decision granted no abatement. The Town during its abatement review process did grant an abatement to the Taxpayer but RSA 76:17-c does not address such a situation. Further, the Town provided testimony at the hearing that, as the result of the board's ordered reassessment (see Docket No.: 18488-01RA), the Town performed an update of waterfront properties in 2002 and then performed a full, town-wide reassessment for tax year 2003. Consequently, even if one were to read RSA 76:17-c as applicable to a municipal abatement, none is warranted to be carried forward because the Town performed a full reassessment in tax year 2003. For the Taxpayer to

have preserved its appeal rights for 2003 and 2004, it needed to have filed a timely abatement request and appeal pursuant to RSA 76:16, 16-a or 17.

For all these reasons, the board denies the Motion. Pursuant to RSA 541:6, any appeal of this Order by the Taxpayer to the supreme court must be filed within thirty (30) days of the date on this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Dorothy Shovan Trust, Dorothy G. Shovan, Trustee, 788 Little Sunapee Road, New London, New Hampshire 03257, representative for the Taxpayer; and Chairman, Board of Selectmen, Town of New London, Post Office Box 240, New London, New Hampshire 03257.

Date: August 19, 2005

Anne M. Stelmach, Clerk