

Elaine H. and Timothy M. Mahood

v.

Town of Pittsfield

Docket Nos.: 19842-02PT and 20501-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2002 and 2003 ad valorem assessments of \$148,300 (land \$63,150; buildings \$85,150) for tax year 2002 (Docket No. 19842-02 PT) and \$148,300 (land \$63,150; buildings \$85,150) for tax year 2003 (Docket No. 20501-03PT) on a portion of a 48.5-acre lot, Map R43, Lot 08 at 125 Governor’s Road (the “Property”). The portion that is the subject of these appeals consists of 3.5 acres containing a single-family home and is not in current use (hereinafter, the “NICU Portion”). The remaining 45 acres are in current use (hereinafter, the “CU Portion”) and the current use assessments are not being contested on these appeals. The appeals were consolidated for hearing. For the reasons stated below, each appeal is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers were required to prove the assessments on the NICU Portion were higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

One of the Taxpayers, Elaine H. Mahood, attended the hearing, accompanied by her two brothers, James A. Pritchard and Anton E. Pritchard; they argued the assessments were excessive because:

(1) while they do not contest the indicated market value for the Property as a whole shown on the assessment-record cards (\$181,800), the Taxpayers believe the Town allocated too much of the land value to the NICU Portion and too little to the CU Portion, resulting in higher ad valorem assessments for the NICU Portion under appeal;

(2) the NICU Portion should be assessed for ad valorem purposes by accepting the Town's indicated assessment for the Property as a whole (\$181,800), and deducting the cost of improvements (\$4,890.28) made by the Taxpayers and a computed (ad valorem) estimated value of the CU Portion (\$63,637.38), resulting in a residual \$123,052.90 ad valorem assessment for the NICU Portion (instead of \$148,300), as shown on page 2 of Taxpayer Exhibit 1;

(3) the valuation model used by the Town is "seriously flawed" and the Town cannot support its conclusions that excess "rear" land has a value of \$1,000 and excess "waste" land has a value of \$100 or the chart it used for allocating percentages of excess acreage between "rear" and "waste" land, respectively, based on overall parcel size; and

(4) since the Town undervalued the CU Portion and overvalued the NICU Portion of the Property, the Taxpayers are entitled to an abatement on the NICU Portion.

The Town, represented by David Wiley, a contract assessor, and Jeremiah Lamson, the Town Administrator, argued the assessments were proper because:

- (1) the Property was purchased in September, 2000 for \$150,000 by the Taxpayers;
- (2) the “trend factor” (appreciation rate) the Town applied is 1.5% per month which would yield a value of \$190,759 as of April 1, 2002, but the Town’s assessment-record card reflects a lesser estimated value (\$181,800) for the Property which the Taxpayers have not contested;
- (3) the Taxpayers refused to allow the Town to make an inspection of the building, leaving the Town unable to determine whether the building has been properly assessed (at \$85,150, as shown on the assessment-record card) or whether any measurement, classification or other errors exist that need correction (such as the number of bedrooms, for example);
- (4) the assessed value of the NICU Portion (\$148,300), consisting of 3.5 acres and an attractive dwelling, is less than the purchase price paid for the Property as a whole several years earlier and land was appreciating in value significantly in the Town during this period; and
- (5) the Taxpayers did not meet their burden of proof.

The parties agreed the level of assessment in the Town was 100% for tax year 2002 and 90% for tax year 2003.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the NICU Portion of the Property was disproportionately assessed in tax years 2002 and 2003. The appeals are therefore denied.

Because proportionality is determined by market value and the overall level of assessment in the Town, see RSA 75:8 and RSA 75:1, the Taxpayers had the burden of

establishing the market value of the NICU Portion was less than \$148,300 in tax year 2002 (assessment divided by 100%) and \$164,777 in tax year 2003 (assessment divided by 90%).

The board finds the Taxpayers failed to do so. Instead, they emphasized alleged problems in the Town's assessment methodology and presented an alternative statistical approach to estimating the market value of the CU Portion which, in the board's view, failed to prove the NICU Portion was disproportionately assessed.

The supreme court has recently confirmed that even if a municipality's assessment methodology is demonstrably flawed, the burden rests with taxpayers to establish that the resulting assessments are disproportional. Porter v. Town of Sanbornton, 150 N.H. 363, 369 (2003) (even a less "reliable" or "flawed methodology," used by municipality, when challenged by taxpayers, "does not, in and of itself, prove" disproportional assessment and each taxpayer "bears the burden of demonstrating that he or she is paying a higher amount than he or she ought to pay. (Citation omitted.)").¹

The NICU Portion consists of 3.5 acres with approximately 700 feet of road frontage and an attractive, well-maintained 1 and ½ story, cape-style dwelling, evident in the photographs submitted in Taxpayer Exhibit 1. Thus, the Taxpayers should have focused on proving that the real estate rights encompassed in the NICU Property had a market value less than \$148,300 in

¹ In Porter, the municipality had increased waterfront assessments initially by 14% and then by 18%, allegedly "in retaliation" for questioning of the initial increase by certain taxpayers, and, according to the trial court, was "unable" to explain the methods used by its expert at trial. Id. at 371. Nonetheless, the supreme court concluded:

"We presume that assessments are conclusive . . . and place the burden on the taxpayer to show that assessments made against his or her property are disproportionate. (Citation omitted.) A finding of fraud, bad faith or arbitrariness does not prove a disproportionate tax burden (citation omitted), because a taxpayer must prove that he or she is paying more than he or she ought to pay. (Citation omitted.)"

Id. On these appeals, the board interprets the Taxpayers' arguments to mean they consider the Town's methodology to involve some elements of "arbitrariness," but not fraud or bad faith; evidence of arbitrariness, however, does not establish disproportionality.

2002 and \$164,777 in 2003. Despite the Taxpayers' statistical presentation criticizing the Town's valuation approach, the Taxpayers did not establish the ad valorem assessments on the NICU Portion were excessive for the tax years under appeal.

The Taxpayers failed to present any direct market value evidence regarding the NICU Portion to contest the Town's assessments, either by presenting an appraisal or any sales evidence of comparable improved properties with similar characteristics. Instead, they relied upon the estimated (ad valorem) value for the Property as a whole, shown on the Town's assessment-record card to be \$181,800, and then deducted the cost, which they assumed equates to value, of improvements made by them (\$4,890.28) and, most critically, their own estimate of the market value of the CU Portion, to derive a residual value for the NICU Portion.

They argued their estimate of the CU Portion corrects for alleged errors in the Town's valuation model. Using regression analysis, as shown in Taxpayer Exhibits 1 and 2, they arrived at a higher per acre and overall value ("-\$1,414.164/rear acre" x 45 acres = \$63,637.38) for the CU Portion than the value estimate implied on the Town's assessment record card (\$36,150). While the Taxpayers' calculations, analysis and arguments regarding the CU Portion were considered in some detail, the board finds the Taxpayers failed to prove the NICU Portion is disproportionately assessed.

According to the evidence, the Town estimated base lot values for unimproved and improved land by focusing on 19 vacant land sales (with prices trended and adjusted) and extracting the value of "excess" acreage involved in each sale using prescribed values (of \$1,000 per acre for "rear" land and \$100 per acre for "waste" land) and a chart to determine (based on total acreage) what percentage of the excess land is "rear" and how much is "waste." Using this approach, the Town computed a base lot value of close to \$35,000 for an unimproved primary

site in “Neighborhood - 2,” where the Property is situated. Using essentially the same methodology for 21 “land and building” sales, and extracting the building value, the Town computed a base lot value of approximately \$55,000 for an improved primary site. (See the “Neighborhood - 2” tables included in Taxpayer Exhibit 1.) Cf. REV 603.15 (Sales Surveys).

The Taxpayers critiqued the Town’s approach in several ways. They pointed out, for example, that if the Town had focused only on unimproved land sales of approximately two acres (a smaller sample of 5 rather than 19 sales), the average base lot value would fall by about \$7,000 (to approximately \$28,000 from \$35,000). They also established, upon cross-examination, that the Town’s representatives could not support either the excess “rear” and “waste” values noted above or the chart allocating percentages between each category depending on the total size of the lot. (See the Town’s “Rear Acreage Adjustment Chart” for the tax year 2002 revaluation, included in Taxpayer Exhibit 1.) The Town’s representatives testified they lacked detailed knowledge to explain or support this chart because they were not personally involved in the Town’s tax year 2002 revaluation.

The Taxpayers’ alternative approach consists of using standard statistical methods to correlate sale prices, as trended and adjusted by the Town, with acreage: doing so, according to the Taxpayers, results in a base value of approximately \$28,000 for the primary site and approximately \$1,400 for each excess acre (compared to \$35,000 for the primary site and less than \$800 for each excess acre implied by the Town’s methodology). See Taxpayer Exhibit 1, p. 8. They then used this conclusion to estimate the market value of the CU Portion as being approximately \$63,600 in each tax year (much higher than the residual shown on the assessment-

record card) and therefore argued the market value of the NICU Portion should be correspondingly reduced.²

The board need not rule on whether the Taxpayers' alternative represents a better method for estimating proper assessments, however, in order to decide these appeals. This is because the Taxpayers failed to meet their burden of proving the assessments on the NICU Portion, whether the Town's methodology was "seriously flawed" or not, resulted in disproportional assessments. The evidence indicates the Town used a consistent assessment methodology to assess both improved and unimproved lots, a fact borne out by the assessment-record cards submitted for other properties in the same neighborhood. See Taxpayer Exhibit 3.

Since the Taxpayers refused to allow the Town to inspect the building to correct alleged errors, the board is unable to make any findings regarding whether the building assessment (\$85,150) for the NICU Portion is reasonable (rather than being either underassessed or overassessed). If in fact the building component was underassessed by the Town, then the Taxpayers' argument that the entire NICU Portion is overassessed is considerably weakened. See, generally, Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) (taxpayer not entitled to an abatement "unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town").

In addition, the board cannot accept the Taxpayers' assumption that the cost of improvements equates to a dollar-for-dollar increase in value. Thus, simply because the Taxpayers spent \$4,890.28 on "house maintenance" (improvements) does not mean the building assessment should change by this amount (rather than a greater amount, for example). No

² It bears emphasis that the Taxpayers were not taxed on the market value of the CU Portion because it was assessed under current use: the assessment-record card shows a total current use assessment of \$2,650 for the 45 acres, which the Taxpayers have not appealed.

evidence was presented regarding how the improvements affected the market value of either the Property as a whole or the NICU Portion.

Most importantly, it is the market, composed of willing buyers and sellers, that determines value, rather than extrapolations from a statistical analysis based on a sample of prior sales and one specified variable (acreage). This is one key failing in the regression analysis performed by the Taxpayers: their approach assumes that each additional acre of land, wherever situated and whatever its quality, adds a uniform amount (approximately \$1,400) to the value of the lot. In the board's experience, buyers will adjust how much they are willing to pay for land based upon its location and quality, as well as other characteristics, not simply the total acreage involved.

The use of the "chart" described above did allow the Town to take into account some differences in land values based upon rough estimates of how much is likely to be "rear" (higher value) or "waste" (lower value) land.³ It would, of course, be helpful for the Town to refine and improve its assessment methodology in the future in order to provide additional support and documentation for some of its assumptions, and the board encourages it to do so. This does not mean, however, that the resulting assessments at issue in these appeals for tax years 2002 and 2003 should be set aside, absent evidence of disproportionality. Moreover, while the Taxpayers may be correct that the CU Portion has a market value that is much higher than implied by the

³ In a June 8, 2004 letter to the Town's board of selectmen (included in Taxpayer Exhibit 1), Mr. Wiley explained the contract assessor who performed the Town's 2002 revaluation, Mr. Jeff Earls of Earls Nieder & Perkins:

"[U]sed a rear acreage adjustment chart to determine a breakdown between excess rear and excess waste [land].

"It is our determination from prior experience that as the parcel size increases a larger percentage needs to be put into excess waste. This accounts for areas of poor access to the portion furthest back, poor areas of topography, and any low or wet areas. Without an ideal number of sales of only excess rear properties it is difficult at times to establish a rear acre value. In these instances we may have to rely on values established in other similar towns and determine how the numbers would calculate."

Town's assessment-record card, such a conclusion does not necessarily establish that the NICU Portion has a lower market value, which is what the Taxpayers were obligated to prove.

In summary, the board cannot find, based on the evidence presented, that the NICU Portion was disproportionately assessed by the Town in either tax year 2002 or 2003. While the Taxpayers clearly devoted considerable time and attention to studying the Town's sales sample and testing and critiquing it, the evidence presented failed to establish the market value of the NICU Portion was below \$148,300 in tax year 2002 (assessment divided by 100%) and \$164,777 in tax year 2003 (assessment divided by 90%). For these reasons, the appeal is denied.

The board has responded to the Taxpayers' requests for findings of fact and rulings of law in Addendum A attached hereto.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Elaine H. and Timothy M. Mahood, 3869 Federer Place, St. Louis, Missouri 63116-3130, Taxpayers; Chairman, Board of Selectmen, Town of Pittsfield, Post Office Box 98, Pittsfield, New Hampshire 03263; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, New Hampshire 03301, representative for the Town.

Date: May 10, 2005

Anne M. Stelmach, Deputy Clerk

Addendum A

TAXPAYERS' REQUESTED FINDINGS OF FACT AND RULINGS OF LAW

The "Requests" received from the Taxpayers are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

- a. the Request contained multiple requests for which a consistent response could not be given;
- b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the Request was irrelevant; or
- e. the Request is specifically addressed in the Decision.

A. Request for Findings of Fact.

1. The extent of the land of the subject property is 48.5 acres. (See Mahood Tax Card, R43-0008-0000, and see Municipal Market Data Survey, Tax Neighborhood 2, Land and Buildings; both included in appeal document)

Granted.

2. The subject property includes an ad valorem assessed 3.5 acre part with man-made improvements on the land. (See the Mahood tax card, which erroneously specifies 2 acres; the itemizations of "Land Types" do not add up to the specified total of 48.5 "Legal acres.")

Neither granted nor denied.

3. The subject property includes a current use assessed 45 acre part which includes no area of the 3.5 acre ad valorem assessed part. (See Mahood Tax Card, R43-0008-0000)

Granted.

4. The appellants' purchase of the subject property is a fair market transaction in Pittsfield's Municipal Market Data Survey, Tax Neighborhood 2, effective valuation date April 1, 2002.

(See Mahood Tax Card R43-0008-0000, and see Municipal Market Data Survey, Tax Neighborhood 2, Land and Buildings)

Neither granted nor denied.

5. The appellants added \$4,890.280 of fair market value to the subject property prior to April 1, 2002. (See appeal document, page 14)

Neither granted nor denied.

6. The fair market value, trended and adjusted, of the appellant's entire property on April 1, 2002 was
\$181,800 + \$4,890.280.

(See Mahood Tax Card, R43-0008-0000, and see paragraph 5, above)

Neither granted nor denied.

7. The DRA equalization ratio effective April 1, 2002 is 100%. (Source: DRA)

Granted.

8. An informed buyer will pay no more for an improved property than the price of acquiring a vacant site and constructing a substitute building just as good -- provided construction does not take so long delay becomes a factor. (See New Hampshire Assessing Reference Manual, 1998, page 5-6; and see DRA Chapter Rev 600, Rev 603.01, (e); and Rev 603.15, (e), (5); both attached)

Granted.

9. The fair market values of residual land—i.e., land discounting improvements to the property—within Tax Neighborhood 2, effective April 1, 2002, are given by the vacant land sales data set of Pittsfield's Municipal Market Data Survey, Tax Neighborhood 2, effective April 1, 2002.

Neither granted nor denied.

10. Within the Tax Neighborhood 2 vacant land sales data set, different properties differed in price, on average, by approximately the difference in property acreage multiplied by

\$1,414.164, trended and adjusted, effective April 1, 2002. (See appeal document pages 7 and 8).

Neither granted nor denied.

11. Rear acres of properties in Tax Neighborhood 2 have an average fair market value of approximately \$1,414.164/rear acre, trended and adjusted, effective April 1, 2002. (See appeal document pages 7 and 8).

Neither granted nor denied.

12. The fair market value of the 45 acre current use assessed part of the subject property is approximately

45 rear acres * \$1,414.164/rear acre = \$63,637.38, trended and adjusted, effective April 1, 2002.

(See paragraphs 3 and 11 above).

Neither granted nor denied.

13. The fair market value of the 3.5 acre ad valorem assessed part of the subject property is approximately

\$181,800 + \$4,890.280 – \$63,637.38 = **\$123,052.90**, trended and adjusted, effective April 1, 2002.

(See paragraphs 2, 6 and 12, above)

Neither granted nor denied.

14. The current use assessment of the 45 acre current use part of the subject property is approximately

45 current use acres * \$59/current use acre = **\$2,655**, effective April 1, 2002.

(See paragraph 3 above, and see Mahood Tax Card, R43-0008-0000)

Neither granted nor denied.

15. The Tax Neighborhood 2 vacant land sales data set contains five approximately 2 acre vacant building sites. (See appeal document, page 3; and see Municipal Market Data Survey, vacant land sales data set)

Granted.

16. Each of the approximately 2 acre vacant building sites in the Tax Neighborhood 2 vacant land sales data set actually sold, trended and adjusted, for less than \$35,000. (See appeal document, page 3; and see Municipal Market Data Survey, vacant land sales data set)

Granted.

17. The average selling price, trended and adjusted, of the five approximately 2 acre vacant building sites in the Tax Neighborhood 2 vacant land sales data set is approximately \$27,628, trended and adjusted, effective April 1, 2002. (See appeal document page 3)

Granted.

18. The base value of a 2 acre vacant building site is approximately \$27,913.777, trended and adjusted, effective April 1, 2002. (See appeal document pages 4, 5 and 6).

Neither granted nor denied.

19. Pittsfield's Neighborhood Guide to tax assessment base values *erroneously* specifies a base value of \$35,000 for a 2 acre vacant building site in Tax Neighborhood 2, effective April 1, 2002. (See paragraph 18, above, and Neighborhood Guide, included in appeal document)

Neither granted nor denied.

B. Request for Rulings of Law.

20. The total taxable assessment of the subject property is the sum of its ad valorem and current use assessments.

Neither granted nor denied.

21. The total taxable assessment of the subject property is

$\$123,052.90 + \$2,655 = \$125,707.90$, effective April 1, 2002
(See paragraphs 5, 15 and 20 above).

Denied.

Elaine H. and Timothy M. Mahood

v.

Town of Pittsfield

Docket Nos.: 19842-02PT and 20501-03PT

ORDER

The board has reviewed the Motion for Rehearing (“Motion”) filed by the “Taxpayers” with respect to the May 10, 2005 “Decision” in these two appeals (for separate tax years). The Motion is denied.

The board has carefully reviewed the detailed and lengthy arguments presented in the Motion (see, e.g., the “grounds” stated in Sections 1.A. - L.). The board will not respond to them further here because the Decision speaks for itself and many of the same points were raised by the Taxpayers at the hearing and in their submissions. While the board appreciates the

Taxpayers strenuously disagree with the board's findings of fact and conclusions of law, such disagreement, however motivated, does not constitute "good reason" for granting the Motion.

See RSA 541:3 and TAX 201.37.

Any appeal of the Decision must be by petition to the supreme court filed within thirty days of the date of this Order shown below. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Elaine H. and Timothy M. Mahood, 3869 Federer Place, St. Louis, Missouri 63116-3130, Taxpayers; Chairman, Board of Selectmen, Town of Pittsfield, Post Office Box 98, Pittsfield, New Hampshire 03263; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, New Hampshire 03301, representative for the Town.

Date: June 21, 2005

Anne M. Stelmach, Deputy Clerk