

Davis Revocable Trust

v.

Town of Auburn

Docket No.: 20012-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$229,500 (land \$126,600; buildings \$102,900) on a 2.33-acre lot with a single-family home (the “Property”). For the reasons stated below, the appeal for abatement is granted, based on the land assessment revision presented by the Town at the hearing.

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’s representatives argued the assessment was excessive because:

(1) the land was acquired 30 years ago when they built a modest home on the Property;

- (2) the land is a former cranberry bog and they had to “build up” the leach field for the septic system by four feet because of the wetness;
- (3) about one-half of the land remains wet until July or August to the point where ‘a lawn mower would get stuck and children can’t play there’;
- (4) both older and more recent photographs of the Property (Taxpayer Exhibit 1) demonstrate these wet conditions on the land;
- (5) the neighborhood has mobile homes and high traffic because of the transfer station and highway access issues, which also adversely affect value;
- (6) the comparables used by the Town are newer and have significantly more square footage than the Property; and
- (7) the Property is entitled to a larger abatement than the Town is willing to grant.

The Town, represented by Loren Martin of Avitar Associates, the contract assessor, recommended the assessment be revised to \$219,400 to further account for the lot’s wetness and argued the revised assessment was proper because:

- (1) the Town performed a revaluation in 2003 and the level of assessment in that year was 100.1%, as measured by the median ratio;
 - (2) the Taxpayer failed to submit any evidence of the Property’s market value;
 - (3) the Town agrees the Property is wet, a factor affecting approximately one-half of the land;
 - (4) an acre of improved land has a base value of \$105,000 in the Town;
 - (5) the neighborhood is ‘above average,’ justifying a 10% upward adjustment in the base value;
- and
- (6) the revised assessment abates the land value (by a total of \$10,100 -- to \$116,500), by applying a (lowered) \$105,000 per acre base rate to the primary one acre with a 110%

neighborhood adjustment factor, and a \$2,500 per acre base rate to the excess 1.33 acres, with a (greater) -30% adjustment for wetness (topography).

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$219,400, using an abated \$116,500 land value, as proposed by the Town at the hearing, and an unchanged building value of \$102,900.

The board considered the other evidence submitted by the Taxpayer, including the photographs in Taxpayer Exhibit 1 and their testimony regarding the wetness of the land and the remedial work needed when they built their house some 30 years ago. The Taxpayer also cited an appeal for tax year 1986, which was decided by the board and resulted in an abatement on the Property. See John Jay Davis and Anna Marie Davis v. Town of Auburn, BTLA Docket No. 3279-86 (June 24, 1988).¹

Viewing the evidence as a whole, the board finds the land adjustment by the Town is sufficient to take into account the wetness issue. There was no evidence that wetness made the primary site unusable or that a larger adjustment (than the \$10,100 proposed by the Town) was warranted for the year under appeal.

The Taxpayer, who has the burden of proof, did not, however, submit any market value evidence that would allow the board to conclude the Property, as abated above, was disproportionately assessed for tax year 2003. The touchstone of proportionality is market value, adjusted, of course, by the level of assessments in the municipality. See, generally, Porter v.

¹ As correctly noted by the Taxpayer, wetness was an issue in that appeal, especially with respect to the rear 1.33 acres. The decision also mentions an argument that the Property "is surrounded by prefabricated and mobile homes."

Town of Sanbornton, 150 N.H. 363, 366-67 (2003). [No adjustment is needed here, however, because the level of assessment was approximately 100% in the Town for tax year 2003.]

The board considered the market value evidence presented by the Town. This evidence was not well-developed; the Town simply presented what it called a “Comparable Sales Report” (Municipality Exhibit A), which contained sales information on eleven other properties, but failed to submit the assessment-record cards for each property (as required by the board’s rules, see TAX 201.33(f)) or to make any meaningful analysis of the sales, such as making suitable adjustments for any differences affecting value. While taxpayers have the burden of proof on appeal, Avitar, in this case having performed a reassessment for the Town in 2003, has a contractual responsibility to defend the assessments on appeal. See Rev 603.17(c). The defense provided, while perhaps adequate to fulfill its contractual responsibilities, was simplistic and unsubstantial as noted above.

These sales do demonstrate, however, that property values have appreciated substantially since the time when the Taxpayers acquired the Property three decades ago. This appears to be true for the neighborhood, at least based on the limited sales information contained in Municipality Exhibit A. No evidence was presented to support the allegedly adverse effects on market value mentioned by the Taxpayer (such as the presence of mobile homes and increased traffic due to the highway and the transfer station). While no conclusive estimate of the specific market value of the Property can be drawn from the evidence presented, the Taxpayer failed to show how the revised assessment was disproportionate.

For these reasons, the board finds the assessment on the Property should be abated to \$219,400 and the appeal is granted.

If the taxes have been paid, the amount paid on the value in excess of \$219,400 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Town shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Davis Family Revocable Trust, John and Anna Davis, Trustees, 136 Pingree Hill Road, Auburn, New Hampshire 03032, Taxpayer; Chairman, Board of Selectmen, Town of Auburn, Post Office Box 309, Auburn, New Hampshire 03032-0309; and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, New Hampshire 03258, representative for the Municipality.

Date: June 29, 2005

Anne M. Stelmach, Clerk