

Horace and Emily Poynter Trusts

v.

Town of Durham

Docket No.: 20019-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$619,967 (land \$278,067 (ad valorem \$276,200; current use \$1,867); buildings \$341,900) on Map 12/11-1 (“Lot 11-1”), a 12.27 acre parcel improved with an approximately 3700 square foot 1860’s dwelling and attached barn (the “Property”). 1.48 acres of the parcel is not in current use and has an ad valorem assessment of \$276,200 while the balance of the parcel (10.79 acres) is assessed in current use with an assessed value of \$1,867. The Taxpayer also owns two non-appealed properties all assessed in current use: Map 12/11-2 (“Lot 11-2”), an L-shaped parcel of 31.98 acres between the Property and Oyster River; and Map 16/8, a 30 acre parcel on the south side of Durham Point Road. 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's arguments of why the assessment is excessive are contained in 56 paragraphs appended to the appeal document (and as amended by Taxpayer's Exhibit 2) and are too lengthy to recite in their entirety here. However, the Taxpayer's general concern focused on the \$276,200 assessed value for the 1.48 acres of land not in current use being excessive because the Town had assessed it as having access to Oyster River across the adjoining parcel (Lot 11-2) and such consideration is precluded because Lots 11-1 and 11-2 are two separate subdivided lots of record and thus separate estates pursuant to RSA 674:37-a, I. Further, the Taxpayer suggested several appropriate revisions to the Town's assessment "influence factor" and "condition factor" based on a comparison of increases of those factors in a number of properties in the Property's general neighborhood.

The Town argued the assessment was proper because:

- (1) the Taxpayer owns Lot 11-1 and Lot 11-2 and Lot 11-1 would not be sold without some access being granted to the Oyster River waterfront over Lot 11-2;
- (2) the waterfront access rights of Lot 11-2 has an influence on the market value of Lot 11-1 and must be considered when assessing Lot 11-1; and
- (3) even if the waterfront influence of Lot 11-2 is not considered, the sale of three non-waterfront properties, as analyzed in Municipality Exhibit A, support the Town's assessment.

The parties stipulated that, as a result of the 2003 reassessment, the level of assessment within the Town was 98.6% based upon the department of revenue administration's ("DRA") weighted mean ratio.

Board's Rulings

Brief Appeal History

As noted in Municipality Exhibit A, the Taxpayer appealed a similar issue to the board for tax year 1988 (Horace and Emily Poynter Trust v. Town of Durham, Docket No.: 5436-88, decision dated July 26, 1990) ("Prior Decision"). At the time of the 1988 appeal, the parent Lot 11 was one unsubdivided parcel of approximately 40 acres with 2 acres retained out of current use around the buildings. In the Prior Decision, the board found the access, view and proximity to Oyster River contained in the two acres not in current use around the buildings must be considered in valuing those two acres and denied the Taxpayer's request to lower the influence factor from 1.30 to 1.25 and the condition factor from 200 to 120. (Prior Decision at p. 1) In January 1991, the Taxpayer inquired of the Town how the assessment would be revised if subdivided. The Town's response of February 13, 1991 (appended to the Taxpayer's appeal) indicated the influence factor would be 1.20 and the condition factor 1.25. The Taxpayer then subdivided the "parent" property in March 1991 and subsequently received separate assessed values for Lot 11-1 and Lot 11-2.

RSA 674:37-a was enacted and RSA 75:9 was amended in 1998, subsequent to the Prior Decision, to provide that lots created as part of an approved subdivision plat are to be

considered separate estates and assessed as such until such approval is subsequently revoked or merged.¹

Board's Findings

For the following reasons, the board finds the Taxpayer did not carry its burden in showing the Town's total assessment for Lot 11-1 was disproportionate to market value, despite the Town incorrectly ascribing waterfront access value to Lot 11-1.

It is well established law in New Hampshire that the taxpayer has the burden to prove that its assessment is proportionate relative to market value and the general level of assessment within the community:

To succeed on their tax abatement claim, the plaintiffs have the burden of proving by a preponderance of the evidence that they are paying more than their proportional share of taxes. Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 254 (1994).

To carry the burden of proving disproportionality, the taxpayer must establish that the taxpayer's property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

Porter v. Town of Sanbornton, 150 N.H. 363,367-368 (2003)

¹ RSA 674:37-a:

If approval of a subdivision plat has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality, then such lots or parcels shall for that tax year be assessed and appraised as separate estates pursuant to RSA 75:9, whether or not any such sale or transfer has actually occurred, and shall continue to be so assessed unless and until subdivision approval is revoked under RSA 676:4-a, or the parcels are merged pursuant to RSA 674:39-a.

RSA 75:9:

Whenever it shall appear to the selectmen or assessors that 2 or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory. In determining whether or not contiguous tracts are separate estates, the selectmen or assessors shall give due regard to whether the tracts can legally be transferred separately under the provisions of the subdivision laws including RSA 676:18, RSA 674:37-a, and RSA 674:39-a.

Here we find the Taxpayer did not carry its burden for several reasons. First, the Taxpayer submitted extensive comparative analyses of the increases (both in absolute and percentage terms) in assessments and assessment components (land factors, land values, building values) of various comparables from the 2002 assessments to the new 2003 assessments. The Taxpayer argued its land assessed value and land factors should increase in a similar fashion as the comparables presented. The board finds such evidence does not conclusively prove the Property is disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal reassessment or update is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8-a requires municipalities to value all property anew at least every fifth year and RSA 75:8 requires municipalities to examine and reappraise annually any real estate that has changed in value. The Town's 2003 reassessment complies with these statutes and is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

The Taxpayer's analyses also fail because they do not provide any market related insight as to whether the old assessments and factors were correct or not or whether the 2003 assessments and factors of the comparables are correct or not. It is only a relative comparison of change. The only way to determine whether an assessment is proportional is to estimate a property's market value, not just one component, and relate it to the general level of assessment within the community. "In order to determine the appropriate assessed value for a property, the board must make specific findings regarding the property's market value and the equalization ratio by which to discount the market value to an assessed value." Appeal of City of Nashua, 138 N.H. 261, 263 (1994). While the parties agreed the 2003 level of assessment was 98.6%, the

Taxpayer's analyses of largely the land component of the assessment failed to present market evidence adequate to result in a creditable market value estimate of the Property.

Second, the Taxpayer focused its appeal solely on the land component of the Property's value and accepted the building value as appropriate. The board, however, must consider the market value of the Property as a whole because that is how the market views value rather than considering the separate land and building components as argued by the Taxpayer (see Appeal of Sunapee, 126 N.H. 214, 217 (1985)). The Taxpayer presented no creditable evidence to show the total non current use assessment of \$618,100 (land not in current use \$276,200; buildings \$341,900) for the 1.48 acres not in current use and the buildings exceeded market value.

The Taxpayer instead focused on a legal argument that due to the subdivision of Lot 11-1 and the provisions of RSA 674:37-a, I, the Town was precluded from ascribing any value to Lot 11-1 for the water access afforded through common ownership of Lot 11-2. While the board finds the Taxpayer is correct in its legal analysis that due to the approved subdivision, Lots 11-1 and 11-2 are separate estates and thus the right of water access is contained solely in the bundle of rights configured with Lot 11-2, the Taxpayer failed to show how the Town's error in ascribing water access value to Lot 11-1 resulted in an assessment that was excessive of market value. As the court has recently found in Porter at 368 and 369:

We have long held that however erroneous, in law or in fact, the assessment may be, we will abate only so much of a taxpayer's tax as in equity the taxpayer ought not to pay. Edes v. Boardman, 58 N.H. 580, 586 (1879). This principle necessarily follows from the language of the statute that commands the abatement of a taxpayer's taxes as justice requires. Id. Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining the amount of that share. Id.

While it is possible that a flawed methodology may lead to a disproportionate tax burden, the flawed methodology does not, in and of itself, prove the disproportionate result.

In this case, while the board finds the Town's ascribing of water access to Lot 11-1 was incorrect, the Property (Lot 11-1) has many positive factors that make it a very desirable Property even as a separate estate. The Property is located in a highly desirable, rural, low density area off of Durham Point Road on Langley Road. Adjoining the Property at the dead end of Langley Road are two large parcels owned by the Langley Family and locally known as the "Buffalo Farm". The Property looks across Oyster River to two large tracts of largely undeveloped land, Wagon Hill Farm owned by the Town and Emery Farm. In addition to the privacy this low density neighborhood provides, Lot 11-1 has a desirable, pastoral view of fields and orchards and a seasonal view of Oyster River across Lot 11-2. Lot 11-1 is improved with an 1860's cape of approximately 3700 square feet of living area in good condition and an attractive barn. Thus the board concludes the Property rights contained in Lot 11-1 (and in particular the 1.43 acres not in current-use) are unique, significant and desirable in the Durham market and the Taxpayer failed to show from any sales of comparable properties that Lot 11-1's total assessment was disproportionate.

Some evidence of the desirability of non waterfront related large tract properties in Durham is contained in the Town's analysis (Municipality Exhibit A). While the magnitude of the adjustments in the analysis indicates the difficulty in finding closely comparable properties and that the improvements vary significantly, it is some evidence the \$618,100 assessed value for the non current use portion of Lot 11-1 is not excessive.

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

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Malcolm Sandberg, 15 Langley Road, Durham, NH 03824, Taxpayer Representative; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 1/18/06

Melanie J. Ekstrom, Deputy Clerk