

**George & Anne Levin**

**v.**

**Town of Holderness**

**Docket No.: 20116-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$488,655 (2.88 acres land not in current use \$247,100; 10 acres current-use land \$1,755; buildings \$239,800) on Map 246, Lot 25, a single family residence on White Oak Pond (the “Property”). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was 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 must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayers failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Town's ad valorem assessment for the land of \$487,900 (without the application of current-use) is excessive based on the "Manias Appraisal" which estimated a total market value of \$550,000 by the sales comparison and cost approaches with a cost approach allocation of \$300,000 for the land;
- (2) the Property contains extensive wetlands and is not readily subdividable; and
- (3) applying the same percentage allocation of value as generated by comparing the Town's value for the 2.88 acres not in current-use compared to the Town's ad valorem land value to Mr. Manias' \$300,000 site value indicates the proper total assessed value should be \$401,707.

The Town argued the assessment was proper because:

- (1) the Taxpayers are not aggrieved by the ad valorem value of the land that is in current-use;
- (2) the Manias Appraisal value estimate actually supports the Town's assessed value; and
- (3) the Manias Appraisal \$300,000 vacant site value in the cost approach is not based on any land sales.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayers are not disproportionately assessed.

The Taxpayers' argument, in short, is as follows. Before the application of current-use (RSA ch. 79-A) value to 10 acres, the total ad valorem land assessment for the 12.88 acres was \$487,900. After current-use, the ad valorem value of the remaining 2.88 acres with 200 feet of White Oak Pond footage not in current-use was \$247,100. The difference of \$240,800 (\$487,900-\$247,100) is an excessive value for the 10 acres based on the Manias Appraisal.

The board finds the Taxpayers' argument, however, does not carry their burden because they are focused on the portion of the total ad valorem assessment that is negated by the

application of current-use assessment to the 10 acres. The Taxpayers are “not aggrieved” by the actual assessment and tax bill because they do not include the ad valorem assessment of the 10 acres. RSA 76:16 provides that “any person aggrieved by the assessment of a tax...” (emphasis added) may file for and request an abatement. The statute is clear and the board has consistently held that for a taxpayer to receive any relief, it must be from an assessment upon which the tax is calculated, (and thus the taxpayer is potentially aggrieved) and not an assessment that is initially made for ad valorem estimate purposes and then negated by the application of an RSA ch. 79-A current-use assessment.<sup>1</sup>

With the adoption of pt. II, art. 5-b to the New Hampshire Constitution in 1968 and the enactment of RSA ch. 79-A in 1973, the assessment of land was fragmented between open space land assessed at its current-use value and developed land assessed at market value. Thus, a taxpayer’s property right sticks, (property rights are often referred to as a “bundle of sticks”) can be segregated and portions assessed at current-use pursuant to RSA ch. 79-A and at market value pursuant to RSA 75:1. In the case at hand, the Taxpayers applied for and received current-use assessment on 10 of the Property’s 12.88 acres. The remaining “sticks” of their bundle of rights that needs to be assessed at market value is a site containing 2.88 acres with 200 feet of frontage on White Oak Pond with the dwelling and other improvements. Thus, on an RSA 76:16 appeal,

---

<sup>1</sup> The board in a number of cases dating back to 1990 has held that if taxpayers were not assessed the ad valorem portion of the tax due to application of current use, they do not have standing to argue the ad valorem assessment as they are not aggrieved by that assessment. Those cases also note that if at some time in the future the municipality attempts to use the ad valorem assessment as a basis for a land-use-change tax, the taxpayers, at that time, have the right of appeal if they disagree with the value. Neil and Eileen Underwood v. Town of Greenland, Docket Nos.: 19285-01PT and 19596-02PT; Edward and Natalie Jones v. Town of Hopkinton, Docket No.: 19281-01PT; Barry Tolman, et al. v. Town of Nelson, Docket No.: 18682-00PT; Gary Lang v. Town of Troy, Docket No.: 18673-00PT; Betty W. Barenholtz v. Town of Marlboro, Docket No.: 15069-94PT; Charles S. and Nancy C. Wetterer v. Town of Hopkinton, Docket No.: 12324-91PT; and John L. Arnold v. Town of Francestown, Docket Nos.: 8718-90PT, 11152-91PT, and 13819-93PT.

(market value appeal) the Taxpayers must show they are aggrieved by ad valorem assessment on the 2.88 acres with water frontage and buildings.

The board finds the Taxpayers' "Computation of Requested '03 Tax Abatement" (Taxpayer Exhibit No. 2) is a calculation, while mathematically accurate, does not result in an assessment that is proportional to the market value of the rights that are not in current-use. This can be seen by a review of the Manias Appraisal. The Manias Appraisal valued all of the Taxpayers' rights without any consideration for current-use assessment. The Manias Appraisal employed primarily a market or sales comparison approach analyzing five comparable properties that had sold making adjustments for differences between the sale properties and the Taxpayers' Property. The sole adjustment relative to the land component of the Property is contained in the "site" adjustment where an adjustment for supplemental land at \$1,500 per acre is made. No further adjustment is made for any excess water frontage due to the Manias Appraisal assertion that a large portion of the frontage "is swampy and considered unusable" and other frontage is rocky with limited access. Utilizing the Manias Appraisal (which besides the assessed value presented by the Town, is the only evidence of market value), and removing its site adjustment for the 10 acres in current-use results in an indicated market value of the improvements and 2.88 acres and water frontage not in current-use being, if anything, in excess of the Town's assessed value. For example, if the first three comparables alone are considered (as they are closer in time to the assessment date and are sales containing lots of 2-3 acres, similar to the 2.88 acres of the Taxpayers' Property not in current-use) and the site adjustment factors in the sales grid are removed, the indicated market value range is between approximately \$505,000 and \$538,000.

While the board understands the Taxpayers' frustration in trying to understand the Town's methodology and is disconcerted by the ad valorem value attributed to the 10 acres, the

focus of the assessment, as noted above, must be on what is the market value of the property rights that are not assessed in current-use. Said another way, the assessment challenge is to estimate the value of the Property as if it contained only 2.88 acres with 200 feet of frontage and the improvements. All the market evidence before the board indicates the Town's assessed value is reasonable for those property rights subject to ad valorem assessment and the Taxpayers' calculation is below market value.

As mentioned from the bench during hearing, the board would encourage the Town, as it progresses with its 2006 reassessment, to produce an assessment-record card that is more descriptive of the valuation calculation (market and current-use) and supported by documentation of the market analysis performed to develop the basic assessment models contained on the assessment-record cards.

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: George & Anne Levin, Box 45, 219 Coxboro Road, Holderness, NH 03245, Taxpayers; and Town of Holderness, Chairman, Board of Selectmen, PO Box 203, Holderness, NH 03245.

Date: September 11, 2006

---

Anne M. Stelmach, Clerk