

Heribert Tryba Revocable Living Trust

v.

Town of Harrisville

Docket No.: 20179-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of: Map 40/Lot 48-1 - \$84,900 (land only – a 1.1-acre lot) (the “Property”). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) nearby similar parcels, Lots 48-4 and 48-5, sold together for a combined sale price of \$84,000 in September 2000;
- (2) lot 48-5 resold in February 2001 for \$45,000;

- (3) the Town's previous contract assessor used the sales incorrectly in his analysis and listed them inaccurately on the assessment-record cards for those properties; and
- (4) the assessment methodology used by the contracted assessing firm during the revaluation was flawed.

The Town argued the assessment was proper because:

- (1) the 200 condition factor was supported by the Sorenson (Map 40, Lot 129) and Lingham (Map 40, Lot 102) sales;
- (2) the resale of Lot 5 was a private sale and was not considered to be an arm's-length transaction; and
- (3) an appreciation rate of 1% per month is appropriate;

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$67,000.

The board finds the sale of several properties provided the bookends for the range of market value for the Property.

The properties designated on the Town tax maps as Lots 48-4 and 48-5 sold together in 2000 for a combined selling price of \$84,000. In 2001, Lot 48-5 resold for \$45,000 to a friend of the seller. Appropriately, the Town raised the question concerning the resale of Map 48-5 due to the fact that the Taxpayer sold the lot to a friend in a private sale with no realtor involvement. Due to the relationship between the buyer and seller, the board finds the resale of this lot may not have been an arm's-length transaction and the selling price was likely below market value. Without the cost to the seller of involving a realtor or the need to advertise, the seller typically could sell the property for a lesser amount and still net more than if the property was

conventionally marketed. For this reason, the board finds this sale to be the bookend for the low end of the Property's market value range.

To establish the bookend for the high end of the Property's market value range the board reviewed the sale of Lot 40-102-11. This lot sold for \$88,000 on March 20, 2002 and was considered an arm's-length transaction by the Town. Situated on the north side of Chesham Pond, Lot 40-102-11 has excellent southern exposure which is frequently desirable in waterfront property and a view of Mt. Monadnock. Further, it is located on a private road rather than a more heavily traveled state highway.

The board finds the Property's market value lies between these bookends. The Property has a somewhat restricted view of the pond; better than Lot 48-5 but inferior to the view from Lot 40-102-11. To account for these factors, the board has adjusted the condition factor of the Property from 190 to 150. The adjustment reduces the assessed value of the Property to \$67,000.

The Taxpayer pointed out several perceived inconsistencies in the Town's methodology. The board notes the assessment under appeal was determined by the previous contract assessor, Nyberg, Purvis & Associates, Inc. ("Nyberg"), but at the hearing the assessment was defended by the Town's current assessor, Avitar Associates of New England, Inc. ("Avitar"). While Nyberg may have employed a flawed methodology by not treating Lots 48-4 and 48-5 correctly in the sales analysis and not making a correct distinction between developed and undeveloped lots, these factors alone do not prove disproportionality.

The Taxpayer and the other Harrisville taxpayers with appeals before the board raised concerns about the accuracy of the assessment methodology employed during the 2003 reassessment (performed by Nyberg) and the inconsistent application of land assessment models through the land adjustment factors and the neighborhood delineations. The nine 2003

Harrisville appeals prompted the board under its RSA 71-B:16 authority to open a reassessment investigation (Docket No. 20668-05RA). In that docket, the board's senior review appraiser noted in her June 1, 2005 report problems with the assessment models, inconsistent or unclear handling of sales data and condition factors and inconsistent neighborhood delineations. These concerns led the Town to enter into a contract with Avitar to address prospectively those concerns. The board noted in an August 15, 2005 order that it would have ordered some reassessment remedy if the Town had not undertaken one on its own.

Nonetheless, despite the reassessment methodology concerns noted both by the board and the Taxpayer(s), those concerns alone do not lead to a finding of disproportionality without probative evidence that the resulting total assessment is disproportionate to market value and the Town's level of assessment. The New Hampshire Supreme Court's ruling in Porter v. Town of Sanbornton, 150 N.H. 363 (2003) is instructive.

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). The plaintiffs produced no evidence regarding the fair market value of their properties. Rather, they attempted to prove disproportionate tax burdens by demonstrating that the town employed a flawed method.

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. at 368.

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.

Id. at 369.

In summary, while the methodology concerns do not alone warrant an abatement, the difference in market factors (view, privacy, etc.) between the Property and the limited sales on Chesham Pond supports granting an abatement, in this case to \$67,000.

If the taxes have been paid, the amount paid on the value in excess of \$67,000 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Heribert Tryba, Trustee, Heribert Tryba Revocable Living Trust, Post Office Box 388, Harrisville, New Hampshire 03450, Taxpayer Representative; Gary J. Roberge and Lynn Cook, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives; and Chairman, Board of Selectmen, Town of Harrisville, 705 Chesham Road, Harrisville, New Hampshire 03450-5529.

Date: 4/13/06

Anne M. Stelmach, Clerk