

Pamela J. Healey

v.

Town of Holderness

Docket No.: 20254-03PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$1,314,100 (land) on Map 235, Lot 21.1, a waterfront lot on 3.847 acres¹ (the “Property”). 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). We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property is a result of a ‘reconfiguration’ of two former parcels that were subdivided into three separate lots;

¹ The Town’s assessment-record card mentions “3.877” acres, but the subdivision plan and deed both indicate 3.847 acres. The Town was unable to account for this minor discrepancy at the hearing, which may have resulted from a typographical error on the Town’s records.

- (2) although subdivision approval was granted on June 20, 2002 and a building permit was obtained in March, 2003, the deed transferring the Property to the Taxpayer was not delivered and recorded until April 24, 2003; and
- (3) because the deed transfer occurred after the April 1, 2003 tax assessment date, the Town erred in assessing the Property as a separate lot in tax year 2003.

The Town argued the assessment was proper because:

- (1) assessments and appraisals are based on the fee simple ownership of property and “what” is owned, rather than on “who” may own it at any given time;
- (2) the highest and best use of the land is as three separate parcels, and the Town approved the subdivision in 2002 establishing the Property and two others as buildable lots, well before the tax year 2003 assessment date;
- (3) the Town sought and obtained legal advice to support the assessments on the three parcels for this tax year; and
- (4) the Taxpayer failed to meet her burden of proof.

Board’s Rulings

Based on the evidence and the “Memorandum of Law” each party submitted, the board finds the Taxpayer failed to meet her burden of proof and the appeal is therefore denied.

In her Memorandum of Law (at p. 1), the Taxpayer argues the Property “did not exist” as of the assessment date and therefore an abatement is warranted. The board disagrees for the reasons stated below.

First, the board finds the Property began to exist as a separate buildable lot when the Town approved the subdivision on June 20, 2002. The subdivision plan delineating the Property and its boundaries was recorded on July 26, 2002. The deed conveying the Property to the Taxpayer was signed on February 8, 2003 and a building permit was applied for and received in

March, 2003. According to the Taxpayer, there was an unintended delay in completing the formal conveyancing and her deed to the Property was not delivered and recorded until April 24, 2003. This delay, however, whether caused by “happenstance” or circumstances beyond her “control” as stated in the appeal document (due to the need to obtain lender approval documentation, for example), is not dispositive; the board finds the delay did not affect the Town’s right to assess the Property as a buildable lot, a right that arose at the time of subdivision approval.

Second, the Town is correct in noting RSA 75:1 required the selectmen to “receive and consider all evidence” of the Property’s “full and true value”; this examination of value evidence properly included the subdivision completed in 2002. Whether one individual owned all three subdivided lots or three individuals had ownership of them, a knowledgeable buyer would no doubt recognize the market value of the Property as a separate buildable lot (even if further formal conveyancing and/or lender approvals may have been anticipated and expected) and the Town was justified in assessing the Property on this basis.

Third, the Town’s assessment is also supported by a statute neither party mentioned in their legal memoranda: namely, RSA 674:37-a (Effect of Subdivision on Tax Assessment and Collection). This statute requires the “separate” assessment and taxation of lots “pursuant to RSA 75:9” when subdivision approval has been granted, “whether or not” any sale or transfer of the subdivided parcels “has actually occurred” by the assessment date. See RSA 674:37-a, I.²

At the hearing, the Taxpayer’s attorney attempted to distinguish her position from that of a more typical land subdivider for the purpose of applying RSA 674:37-a, but this attempt is unavailing. She and her sister (Patricia A. Keiver), who had joint ownership of one parcel prior

² Cf. Harris and Emily Poynter Trusts v. Town of Durham, BTLA Docket No. 20019-03PT (January 18, 2006) (“RSA 674:37-a was enacted and RSA 75:9 was amended in 1998 . . . 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”).

to the subdivision, were clearly part of, and were benefited by, the subdivision application approved by the Town. What formerly had been two parcels of land were reconfigured and subdivided into three parcels, giving: (i) the Taxpayer sole ownership of the Property as a buildable lot; (ii) her sister sole ownership of a second buildable lot; and (iii) another couple (Robert and Maureen Lamb) ownership of the third buildable lot. There is no question this subdivision created value and the Town acted properly in assessing each parcel separately following the subdivision approval, just as it would if one land subdivider had owned all three buildable lots after the subdivision.

Finally, the board finds merit in the Town's citation of RSA 73:10 at the hearing. This statute provides that real property "shall be taxed to the person claiming the same, or to the person who is in the possession and actual occupancy thereof." The case law referencing this statute makes it clear that formal transfer of title is not required for taxation purposes. See Quimby v. Quimby, 118 N.H. 907, 910 (1978), citing Piper v. Meredith, 83 N.H. 107 (1927). There can be no dispute the Taxpayer was in actual possession and occupancy of the Property on and before the assessment date and had even applied for and received a building permit from the Town. While formal delivery and recordation of her deed may have had operative significance for other purposes, and while parties claiming ownership interests can reallocate the tax liabilities resulting from a subdivision should they choose to do so, the Property was subject to assessment and taxation by the Town in tax year 2003 as a separate buildable lot. Since the Taxpayer has not disputed its value for assessment purposes, but only has questioned the Town's ability to assess it as a separate lot, the appeal is denied.

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: Ross V. Deachman, Deachman and Cowie, P.A., 66 Main St, PO Box 96, Plymouth, NH 03264, representative for the Taxpayer; and Town of Holderness, Chairman, Board of Selectmen, PO Box 203, Holderness, NH 03245.

Date: September 13, 2006

Anne M. Stelmach, Clerk