

**T-Q-S Trust**

**v.**

**Town of Plainfield**

**Docket No.: 20272-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$332,273 (land \$157,473; buildings \$174,800) on Map 7, Lot 7100, a single-family residence on 103 acres of which 99 acres are in current use (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). 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 did not dispute the assessment as excessive but did dispute how the assessment was determined because:

- (1) the “view tax” is subjective, discriminatory and unconstitutional as the Taxpayer neither owns nor controls the view;
- (2) the school tax is unconstitutional;
- (3) a communication tower at the airport (7.3 miles from the Property) has a constantly blinking white light that negatively impacts the Property’s view; and
- (4) the Property has no road frontage and its 1,200 foot right-of-way has to be maintained by the Taxpayer.

The Town argued the assessment was proper because:

- (1) the Taxpayer did not present any testimony or evidence to show the Property was disproportionately assessed;
- (2) the Property was assessed consistently with similar properties in the Town;
- (3) the Taxpayer would not allow a complete interior inspection of the Property; and
- (4) the appeal should be denied because the Taxpayer did not carry its burden of proof.

### **Board’s Rulings**

The Taxpayer asserts the manner in which the Property was taxed is unconstitutional. For example, it challenges the constitutionality of the “view” tax and the “school” tax. The board of tax and land appeals (“board”) has no jurisdiction to hear and decide constitutional issues. The powers of the board and the rights of taxpayers appearing before the board are entirely statutory and are limited by the terms of the statute. RSA 76:16-a. See Appeal of Town of Sunapee, 126 N.H. 214 (1985); Thayer v. State Tax Commission, 113 N.H. 113, 114, (1973). For the board to consider the Taxpayer’s constitutional arguments would be to enlarge the scope

of the board's jurisdiction. An administrative tribunal's statutory jurisdiction may not be enlarged beyond the terms of the statute. Thayer v. State Tax Commission Id.

The New Hampshire General Court has determined the property (real estate) tax to be the primary source of revenue for municipalities to fund their public responsibilities and the basis for determining each taxpayer's share of that tax burden as provided in Part I, Article 12 of the New Hampshire Constitution. The legislature has stated all real estate is taxable, unless otherwise provided, (see RSA 72:6 and RSA 72:7) and such real estate, unless otherwise provided, shall be assessed at market value (see RSA 75:1). RSA 21:21<sup>1</sup> defines real estate to include all tangible and intangible rights associated with real property. While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." "Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to exclude others, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate, p. 7 (11<sup>th</sup> ed. 1996). In valuing the bundle of rights for each property, all relevant factors must be considered that have an effect on value. Paras v. City of Portsmouth, 115 N.H. 63, 67–68 (1975).

One of the more significant factors affecting the property's value is its location. A view is a locational attribute. While certainly the feature that creates the view, a water body or a mountain range (or, in a negative manner, a junkyard) is in most instances located physically outside the property being valued, the view is a part of the transmissible bundle of rights of the property being valued. Views may not be as easily quantified as other locational attributes, such

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<sup>1</sup> "I. The words 'land,' 'lands' or 'real estate' shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.

II. Manufactured housing as defined by RSA 674:31 shall be included in the term 'real estate.'"

as road or water frontage or a corner signalized lot in a commercial area. However, to the extent the market indicates the locational attributes, including views, contribute to value, they must be considered and consistently assessed. There currently is no statutory basis through exemption, abatement or deferral to relieve the tax burden that views or any other market related factor may impose upon certain taxpayers.

Assessments must be based on market value. RSA 75:1. There are several ways to define market value, all of which contain the same basic elements. Typically, in real estate market value is determined when fully informed buyers and sellers, acting in their best interests, complete an arm's-length transaction. At hearing the Taxpayer stated it had "no idea" of the Property's market value on April 1, 2003 and had "no argument with the value." After a thorough review of the testimony and evidence before it, and within its jurisdiction, the board finds the Taxpayer failed to carry its burden of proof to show the Property was disproportionately assessed and the appeal is therefore 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

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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Edward and Elaine Brown, 401 Center of Town Road, Plainfield, NH 03781, Taxpayer Representatives; Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, NH 03770; Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; Gary J. Roberge, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258; and Edward Tinker, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Municipality Representatives.

Date: April 25, 2006

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Anne M. Stelmach, Clerk