

**Keith and Susan Plunske**

**v.**

**Town of Chesterfield**

**Docket No.: 20447-03PT**

**DECISION**

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$312,400 (land \$118,900; buildings \$193,500) on a two-acre lot with a single-family home identified as Lot 4 on Mountain Road (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) in 2003, the land value of the Property (Lot 4) increased by “approximately 200%” -- from \$43,700 to \$118,900;

- (2) an adjacent property (Lot 5) with comparable acreage sold for \$35,000 in 2003 and was assessed at \$42,800 and another property (Lot 3) sold for \$46,000 in 1998;
- (3) the Property was purchased in 1992 for \$46,000;
- (4) the market value of the Property as of April 1, 2003 was no more than about \$260,000, based on the two adjacent lot sales, adjusted for site improvements, and the assessed value of the building (\$193,500), which is not being contested; and
- (5) River Road properties, used by the Town in its comparisons, should have higher market values because that road is paved and more desirable because it is farther away from the railroad track and noise and the land is not “banked” (steeply sloped) but is instead relatively flat.

The Town argued the assessment was proper because:

- (1) a revaluation was performed in tax year 2003 and the level of assessment, measured by the weighted mean, was 97%;
- (2) as shown in Municipality Exhibit C, land with direct frontage on the Connecticut River like the Property, appreciated at a much higher rate, which is reflected by relative increases in assessments;
- (3) Lot 1 on Mountain Road is 5 acres but is assessed as a “commercial” use because it has a main house and five rental units and commercial properties were increasing in value at a much slower rate than residential property;
- (4) Municipality B presents a “land residual” analysis using comparable properties on River Road that support the assessment on the Property; and
- (5) the Taxpayers failed to satisfy their burden of proof.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to show the Property's total assessed value of \$312,400 was disproportionate.

The main issue raised in this appeal is the disparity between the lot value indications derived from land only sales in the Taxpayers' neighborhood versus the extracted residual land value of the improved sales utilized by the Town to set the river frontage base rates and adjustments during the 2003 reassessment (summarized in Municipality Exhibit B). During the board's deliberations, Chairman Franklin viewed, from the exterior, the Property and most of the comparables submitted and discussed by the parties, in an effort to understand what factors may be influencing the different market value indications of the land and to observe any neighborhood distinctions between the Mountain Road riverfront properties and the River Road riverfront properties.

Based on the parties' testimony and Chairman Franklin's view, the board concludes that, while there are differences in the locations between the Mountain Road and the River Road properties, those differences are either nominal or offsetting in nature, and thus the board concludes the Town's methodology of applying the same riverfront land factor of 2.50 is appropriate for both locations.

Mountain Road is located at the extreme western side of Chesterfield and is a relatively short cul-de-sac gravel road that intersects with Route 9 within sight of the arched bridges over the Connecticut River to Brattleboro, Vermont. As shown in Municipality Exhibit A, Mountain Road is located on the bank of the Connecticut River for about half of its distance and then swings slightly away (east) from the river before reaching its cul-de-sac and thus, provides for a number of lots, including the Property, to be located between Mountain Road and the

Connecticut River. All the lots have relatively steep access down to the river, some of which have been improved with steps and the like to provide pedestrian and light boat access. Given its dead end nature, the road sees limited traffic but, as the Taxpayers noted, is an access to the entrance point for trails into the Wantastiquet Mountain Natural Area to the south. The intersection of Mountain Road with Route 9 is, during busy traffic times, challenging, but it does provide close proximity to Vermont Interstate 91 access for north/south travel in Vermont and Route 9 access to Brattleboro, Vermont or Keene, New Hampshire.

The River Road neighborhood is accessed by traveling northwest from Route 9 through West Chesterfield and down West Chesterfield's Main Street onto River Road, which is paved. River Road continues on through to Westmoreland and Route 63 with low density residential and agricultural development along its length. The sales on River Road that occurred and are summarized in Municipality Exhibit B are all in one area of compact residential and camp development. The access to the river appears to be of similar steepness as the Mountain Road location and the views of the river and the Vermont shore appear to be similar. Many of the properties that sold on River Road are located closer to the road and have less screening than the Property, which is well screened from the road by natural vegetation. The River Road location is further removed from either north/south or east/west arterial highways, but does not have the challenging intersection with Route 9 as Mountain Road does. Consequently, the board concludes the neighborhoods are generally similar in nature, and thus the sales in the two areas should be generally reflective of riverfront values.

The Taxpayers pointed to the sales of the two adjoining lots and the purchase of their lot as evidence of market value. The Taxpayers stated they purchased their Property in 1992 for \$46,000 while the abutting Lot 3 sold for \$50,000 in 1997 and abutting Lot 5 sold for \$35,000 in

2002.<sup>1</sup> The Taxpayers argued these adjoining lot sales are indicative of undeveloped lot value and adding reasonable development costs, should form the basis for a lower value of the land portion of the assessment.

In their appeal document, the Taxpayers cited another property on Mountain Road (Lot 1) “similar in characteristics” and larger in size (5 acres), “currently assessed at \$120,000.” See Taxpayer Exhibit No. 1. The Town distinguished this property because it is “commercial” and has five rental units, making it not fully comparable to the Property, a single family residence. It is not uncommon for commercial properties to differ in values from single family residences and the Taxpayers failed to prove the difference in assessments was not justified.

Municipality Exhibit B analyzed a number of improved riverfront properties and by extracting an estimated building value from a time trended sale price arrived at a land residual value that was significantly higher for the one-acre primary site than the Taxpayers’ Mountain Road sales (with the exception of Comparable #7 which was the sale of a .78-acre parcel of vacant land for \$85,000 in 2004). The Town’s analysis indicated a land residual value that ranged from approximately \$106,000 to \$140,000. These market indications were incorporated into the Town’s assessment models for the 2003 reassessment and resulted in assessing the Property’s one-acre primary site at \$117,600.

Thus, there exists the approximately \$50,000 difference between the Taxpayers’ claim that the Property should be assessed at no more than \$260,000 and the Town’s assessment of \$312,400. In reviewing the evidence, the board considered whether the site improvements (well, septic, driveway, landscaping, etc.) could account for this significant difference. However, as

<sup>1</sup> The Taxpayers testified to a slightly different sales prices for the adjoining properties but agreed with the sales prices indicated on the assessment-record cards are likely more accurate inasmuch as they were relying upon second hand information for the sale prices.

seen on the view and testified to by both parties, all the riverfront lots include easily developed sites due to their “river bottom” soils comprised of sand and silt mix, and thus their site development costs are not of such magnitude.

The Taxpayers’ burden to show disproportionality must be based on their entire estate (Appeal of Town of Sunapee, 126 N.H. 214 (1985)). Despite the Taxpayers agreeing with the building portion of their assessment, the board must look at the total assessment to determine whether the Taxpayers are shouldering their proportionate share of the tax burden. When a review of the improved sales is done and a review of the Town’s base building replacement costs is performed, the board concludes the Taxpayers’ assessment of \$312,400 is a reasonable estimate of the Property’s total market value and finds the Property is bearing its proportionate share of the tax burden for the following reasons.<sup>2</sup>

First, in the sales of improved properties submitted by the Town, the board finds two properties, 299 River Road and 327 River Road, are the most comparable as improved properties to the Property. The other improved properties submitted by the Town are of significantly smaller camps or converted camps or, as in the case of the 56 Red Road property, has a very steep driveway accessing the improvements off a private road.

While the 299 and 327 River Road properties are the best of the comparables submitted, they are still significantly different than the Property. Both of the comparables are one-story ranch style dwellings as opposed to the two-story configuration of the Property. They are also older, constructed in the 1980s, and have one-half (1,152 square feet for 327 River Road) to two-thirds (1,812 square feet for 299 River Road) the square footage of the living area of the Property

<sup>2</sup> A goal of the Town’s 2003 reassessment was to appraise properties at market value. The department of revenue administration has determined the Town’s 2003 median ratio was 99.8%. Thus, assessed value and market value for 2003 are therefore assumed to be one and the same.

(2,288 square feet minus 192 cathedral ceiling area). The square footage and age differences make both the comparables substantially inferior in value to the Property. The two comparable sales, which are detailed in Municipality Exhibit B, sold in the \$262,000 to \$278,000 price range in 2002 to 2003. The Taxpayers did not present an appraisal or any expert testimony regarding the market value of the Property. Their own opinion of market value of \$260,000 appears substantially low compared to what these inferior, smaller ranches sold for, and thus is an indication that the Taxpayers' opinion of market value is not correct.

Second, the board reviewed the Town's building base rates for both the Property and the two ranch comparables to see if indeed the building value portion of the assessments were accurate. The board reviewed the Marshall and Swift Residential Handbook (a commonly accepted replacement cost source) of building costs, utilizing its March 2002 schedule. The Marshall and Swift replacement costs for the Property are in the \$70 to \$75 per square foot range as opposed to the \$63 adjusted square foot cost utilized by the Town and the replacement costs for the smaller ranches are in the \$80 to \$85 per square foot range as opposed to the approximately \$63 to \$67 per square foot range utilized in the assessment-record cards. This difference is an indication as to why the Town's land residual value in its analysis is higher than the land-only sales plus site development indicated by the Mountain Road sales.<sup>3</sup> If corrected, the building assessment portions of the Property and the comparables would be higher and the indicated residual value for the land would thus be less.

As stated earlier, however, the board's focus is to determine proportionality on the total assessed value. Consequently, even if there is an error in the Town's methodology, as long as

<sup>3</sup> While caution needs to be exercised in drawing conclusions from a singular sale, the sale of the .78-acre vacant lot on River Road (Map 1, Lot A6) in August 2004 for \$85,000 (time adjusted to April 1, 2003 at \$71,400) is also an indication that the building values used by the Town in the residual extraction process of the improved sales are conservative.

the total assessed value (land and improvements) is proportional, no abatement is warranted. Porter v. Town of Sanbornton, 150 N.H. 363 (2003) (a finding of flawed methodology in the town's assessment procedures does not, in and of itself, lead to a finding of disproportionality). Here, the real test is, does the market evidence of improved properties submitted support the Taxpayers' assessed value? We find it does. In short, if smaller, older ranches with riverfront are selling in the \$260,000 to \$270,000 range, then the Town's assessment of \$312,400 for the Property, which is larger and newer, is not unreasonable.

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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Paul B. Franklin, Chairman

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Keith and Susan Plunske, 234 Mountain Road, West Chesterfield, New Hampshire 03466, Taxpayers; Chairman, Board of Selectmen, Town of Chesterfield, Post Office Box 175, Chesterfield, New Hampshire 03443; and James Commerford, Commerford Nieder Perkins, LLC, 556 Pembroke Street, Suite #1, Pembroke, New Hampshire 03275, representative for the Municipality.

Date: July 20, 2005

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Anne M. Stelmach, Clerk