

Jere and Brenda Vincent

v.

Town of Durham

Docket No.: 20491-03PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$559,500 (land \$311,300; buildings \$248,200) on Map 11-31-3, a single-family residence (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.

On December 12, 2005, the Town submitted a Motion for Summary Judgment (“Motion”) asserting the Taxpayers can not carry their burden of proof because they were appealing only the land assessment and not the total assessed value. At the December 20, 2005

hearing, after hearing the parties' arguments relative to the Motion, the board denied the Motion and proceeded to hear the merits of the appeal.

The Taxpayers argued the assessment was excessive because:

- (1) the Town owns a parcel of land known as the "Thatch Bed" between the Property and Oyster River making the Property a "water view" lot rather than a "waterfront" lot;
- (2) the presence of the Thatch Bed property precludes constructing a dock from the Property;
- (3) the Property does not have legal access (no deeded right) to a common dock available for some "Riverview" properties as assented by the Town; and
- (4) a letter from a ReMax realtor states the land value should be \$260,000 due to the Thatch Bed parcel and the fact the Property can not have a dock.

The Town argued the assessment was proper because:

- (1) despite the Town having acquired title to the Thatch Bed adjacent to the waterfront of the Property, that ownership does not materially interfere with the Taxpayers' use of their Property; and
- (2) a copy of the Taxpayers' deed indicates their land goes to the Oyster River thus providing them access to Oyster River.

At the December 20, 2005 hearing, the parties in two appeals (George L. and Brenda L. Crawford v. Town of Durham, Docket No.: 20173-03PT and Jere and Brenda Vincent v. Town of Durham, Docket No.: 20491-03PT) agreed that, due to the similarity of their properties and the issues raised in the appeals, the board could take official notice (RSA 541-A:33, V) of the records in the two proceedings. Consequently, the board's rulings in both cases draw upon the testimony and evidence presented in both appeals.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove that the assessment was disproportionate.

The undisputed evidence presented at hearing was that the Town had received title in March 1973 to a parcel of land known as the Thatch Bed that abuts the Taxpayers' Property at the high tide elevation on Oyster River. This Thatch Bed is land that is flooded during high tide but exposed during low tide in front of the Taxpayers' Property. While the board finds juxtaposition of the Town's Thatch Bed rights and the Taxpayers' Property is unique, no evidence was submitted to show that it would materially interfere with the Taxpayers' use and enjoyment of their Property. The Taxpayers' deed clearly indicates the Property abuts the Oyster River and thus view of and access to the Oyster River and the tidal waters of Little Bay are similar to other Oyster River properties that do not have the Town's Thatch Bed adjacent and beneath the high tide water.

The board finds the assertion contained in the undated ReMax letter (appended to the appeal) that the Thatch Bed precluded the construction of a dock was not supported. In fact the Taxpayers have a dock, albeit in disrepair, and it was not shown that it could not be repaired and used as it previously had been. Furthermore, the board finds the primary value influencing factor is the view of Oyster River rather than access to it from the Taxpayers' Property, based on the Town's testimony that the vast majority of lots on Oyster River do not have docks accessing the water. To the extent that the Thatch Bed may create any uncertainty as to the Taxpayers' ability to maintain a dock, that factor is addressed in the Town's 5% adjustment to the land value.

Given the fact the Thatch Bed abuts only several properties, no current market evidence exists as to any impact it may have. However, as the Town noticed in its January 30, 2004 letter

to the Crawfords (Docket No.: 20173-03PT), the similarity of the Crawfords' purchase price in August 1993 and that of the February 1994 sale of a nearby property, Lot 31-8, indicates the Thatch Bed did not materially impact the market at that time.

In short, the Town, through its 5% adjustment to the land value, has attempted to recognize any uncertainty the market may attribute to the presence of the Town's adjoining Thatch Bed. The Taxpayers failed to present any probative evidence that the Thatch Bed affects the market value of their total property. The Taxpayers only evidence of market value, the ReMax letter, is based on an unsupported premise that the Thatch Bed precludes dock construction and reduces the value of the land. No evidence was submitted by the Taxpayers as to the market value of the Taxpayers' entire estate; thus the Taxpayers have failed to carry their burden of showing their entire estate within a taxing jurisdiction is disproportionate, not just a component of their estate. Appeal of Sunapee, 126 N.H. 214 (1985).

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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Jere and Brenda Vincent, 24 Riverview Road, Durham, NH 03824, Taxpayers; and Chairman, Town Council, Town of Durham, 15 Newmarket Road, Durham, NH 03824.

Date: 1/31/06

Melanie J. Ekstrom, Deputy Clerk