

Henderson Holdings at Sugar Hill, LLC

v.

Town of Sugar Hill

Docket Nos.: 21034-04PT/22385-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 and 2005 assessments of: Map 219/32 - \$1,789,600 (land \$208,200; building \$1,581,400), an inn with 28 rooms in two buildings on 8.5 acres (the “Inn Property”); and Map 219/49 - \$314,591 (land \$260,391; building \$54,200), 61.86 acres encumbered with a conservation easement and improved with a nine hole golf course on 26 acres assessed under a discretionary easement with the remaining 35.86 acres assessed in current use (the “Golf Course Property”) (collectively, the “Property”).

The Taxpayer’s entire taxable estate (the sum of the Inn Property and the Golf Course Property) was assessed at \$2,104,191 for both tax years 2004 and 2005. For the reasons stated below, the appeals for abatement are granted for both years.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 assessments were higher than the general level of assessment in the municipality.

Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- (1) an appraisal of the Inn Property by Morton J. Blumenthal (the "Blumenthal Appraisal") estimated its market value at \$1,180,000 and \$1,035,000 for tax years 2004 and 2005 respectively;
- (2) an income approach calculation based on the golf course's actual income performed by Mark Lutter, the Taxpayer's tax representative, supports assessed values of \$189,797 and \$165,147 for tax years 2004 and 2005 respectively;
- (3) the Property's buildings all have varying degrees of deferred maintenance;
- (4) the water supply to the Inn Property is comprised of several low volume wells that at times necessitate the trucking in of water;
- (5) the Inn Property receives only a "three diamond" rating due to the many infrastructure problems which limits the draw of certain clientele;
- (6) the Inn Property was purchased for more than it was worth in 2000 for \$1,530,000;
- (7) the Inn Property's net operating income is down because although the occupancy rate has increased since 2000, the expenses have risen at a faster rate;
- (8) the Golf Course Property was purchased in April 2002 for \$298,000 after the prior owner had sold the development rights and restricted its use to that of a golf course by a recorded conservation easement; and
- (9) the nine hole golf course is minimally improved, old and shorter than today's standards, subject to the whims of the weather and adds little value to the Inn Property.

The Town argued the assessments were proper because:

- (1) the Inn Property assessment equates to a 4.25% annual appreciation from the Taxpayer's purchase of the Inn Property in 2000 for \$1,530,000;
- (2) the views from the Property are superior to those of the comparables used by either side; and
- (3) the sale of several comparable inns support the assessment; in particular, the sale of the Sugar Hill Inn, which has significantly fewer rental units and no dining facilities, for \$975,000 in May 2005 and \$1,110,000 a year later, indicates the value is higher than that argued by the Taxpayer.

Subsequent to the hearing, the board directed its review appraisers to perform an independent valuation of the Inn Property and the Golf Course Property. Consequently, pursuant to RSA 71-B:14, Ms. Theresa M. Walker inspected the Property and performed an appraisal (the "Walker Report") which was submitted to the parties for their review and comments. The Walker Report estimated the Inn Property had a market value of \$1,883,000 for 2004 and \$1,731,000 for 2005. It also estimated the market value of the Golf Course at \$293,000 for 2004 and \$279,000 for 2005. The Taxpayer's representative, Mr. Lutter, filed a response to the Walker Report on June 26, 2008 (the "Lutter Response"). The Walker Report and Lutter Response are part of the record and were reviewed by the board during its deliberations.

Board’s Rulings

In summary, the board finds the proper assessed values are:

	2004	2005
Inn Property:	\$1,829,450	\$1,528,900
Golf Course Property	\$ <u>243,728</u>	\$ <u>213,528</u>
Total Assessed Value	\$2,073,178	\$1,742,428

Before the board details its findings, some general observations and rulings are in order. The Inn Property is comprised of two turn of the last century buildings which were actually the annex (“Main Inn”) and a cottage (“Hill House”) of a “grand inn” that has since been razed. The Property, as with many properties of that vintage, has some positive and some negative attributes which impact its market value.

On the positive side, the Property’s location and view are major factors influencing its value. All the evidence, including photographs submitted by the Town (Municipality Exhibits B and C) and the photographs contained in the Walker Report clearly show the Property’s dominant marketing feature is the expansive views of the White Mountains to the east of the Property. The views are highlighted in most of the Taxpayer’s marketing and advertising features contained on its website (Municipality Exhibit B) and is the main contributing factor that improvements of such magnitude were constructed on the Property.

On the negative side, the age, size and style of the buildings present challenges in maintenance and compliance with safety codes as a public facility. Also, given its relatively modest size (number of rooms), it is almost by necessity an owner-occupied type of venture. The principals of the Henderson Holdings at Sugar Hill, LLC, Ron and Nancy Henderson (the “Hendersons”), reside in the third floor apartment of a portion of the “Hill House” and it is likely

any owners would also be on-site managers to be able to adequately attend to the details of the integrated hospitality enterprises of the Inn Property.

These aspects of the Inn Property have a direct bearing on the appropriate level of operating expenses and the level of reserve for replacements and management expense deduction to be estimated in any income approach estimate to the Inn Property and certainly would be factors to be considered in any of the other two approaches to value also.

The Golf Course Property is encumbered with a conservation easement (see Taxpayer Exhibit No. 4) which limits its use on 26.45 acres to that of a golf course with the balance of the land restricted to only agricultural and forestry uses. Given this restriction, and its proximity (directly across Sunset Hill Road) from the Inn Property, it is very likely the two properties would generally benefit from mutual ownership and management. Their hospitality/recreational uses compliment each other and the maintenance of the Golf Course Property as open space protects the Inn Property's view and privacy.

Given the income producing nature of both the Inn Property and the Golf Course Property, the board places most weight on the income approach in estimating their values. (In New Hampshire, the supreme court has recognized that no single method is controlling in all cases, Demoulas v. Town of Salem, 116 N.H. 775, 780 (1976), and the tribunal reviewing the valuation is authorized to select any one of the valuation approaches based on the evidence. Brickman v. City of Manchester, 119 N.H. 919, 920 (1979).) In fact, given the significant restrictions of the conservation easement, it is doubtful the Golf Course Property's value could be estimated by the sales approach because of the unlikelihood that sales have occurred of other properties similarly restricted. As no such sales were submitted into the record, the board concludes the income approach is the only basis for estimating the Golf Course Property. Both

parties did provide some sales information relative to the Inn Property. (See the Blumenthal Appraisal and Municipality Exhibits D and E.) However, given the lack of good comparability of the sales and, to some extent, the lack of full knowledge by the parties as to the detailed motivations and conditions of the transactions, the board places most weight on the income approach to valuation for the Inn Property.

After extensive review of the Blumenthal Appraisal, the Walker Report and all the various exhibits submitted, the board concludes the Walker Report embodies the most objective valuation calculation that a prospective purchaser would likely perform to estimate the value of either the Inn Property or Golf Course Property. The Walker Report (see pg. 2) bases its information on a review of the record created at the February 20, 2008 hearing plus an inspection of the Property and meeting with the Hendersons at the Property on March 24, 2008.

Inn Property

As discussed further in detail, the board adopts the Walker Report's general methodology and foundational calculations for the Inn Property. The board has, however, modified its conclusion based on consideration of testimony of the Hendersons and Mr. Lutter, the Blumenthal Appraisal, testimony by the Town representatives and the Lutter Response.

First, the board notes both the Blumenthal Appraisal and the Walker Report's stabilized or *pro forma* effective gross incomes for the Inn Property are quite similar and are based on its historical actuals.

Further, both the Blumenthal Appraisal and the Walker Report have similar estimated expenses, again based on historical averages, except for their own independent estimates of deductions for management and reserve for replacements. Mr. Blumenthal estimated the owner/management and labor at 3% of effective gross income while Ms. Walker estimated it at

5%. The board finds Ms. Walker's owner/management estimate is more reasonable given, as the board has already noted, the intensive management necessary by the owner to make it a viable venture. The Inn Property also involves several enterprises, including managing the guest rooms, the dining rooms, the tavern and all the recreation/function events that are part of the Inn Property's income. The board finds 5% management deduction, which equates to approximately \$57,000 (see pg. 11 of the Walker Report) (in addition to the value of the owner's apartment in the Hill House for which no value was imputed in the income approach) is a reasonable deduction for the owners' compensation for managing the Inn Property.

The age, condition and ongoing maintenance requirements of the Property were addressed in the Blumenthal Appraisal and the Walker Report in essentially three fashions. First, both relied upon historical expenses which incorporated ongoing repair and maintenance expenditure items. Second, both added a deduction for reserve for replacements of short term capital items at 2% of effective gross income. Third, the Blumenthal Appraisal deducted for various code requirements that had not been fully met in both years (\$35,000 for 2004 and \$15,000 for 2005) in the reconciliation analysis of the final value.

As noted in the board's general findings, the Inn Property is of such an age and nature that it entails above average maintenance and repairs as testified to by the Hendersons. In an attempt to replicate the market estimate as a prospective buyer might do, the board has increased the reserve for replacement deduction from 2% to 3% of effective gross income, instead of deducting a cost to cure estimate of outstanding code requirement items as was done in the Blumenthal Appraisal. This increases the Walker Report's deduction of the reserve for replacement an additional \$11,380 increasing the total expenses to \$924,540 and reducing the net operating income ("NOI") to \$213,460. The board finds the 2% reserve for replacement utilized

in both the Blumenthal Appraisal and the Walker Report is perhaps more appropriate for more modern income producing properties that have had reasonable ongoing maintenance. By stabilizing the reserve for replacement at 3%, it recognizes the Property has both some deferred maintenance to be caught up and an ongoing higher level of maintenance.

Both the Blumenthal Appraisal and the Walker Report employ the same capitalization rate for the two years under appeal (10.5% for 2004 and 11.35% for 2005). Those capitalization rates are derived utilizing the mortgage equity technique in the Blumenthal Appraisal and were reviewed in the Walker Report by analyzing sales of four inns in the north country/Lakes Region and determining an estimated capitalization rate from the market. Consequently, the board finds the capitalization rates as utilized in both documents are reasonable.

The largest difference between the Blumenthal Appraisal's calculation and the Walker Report is the estimated value for the furniture, fixture and equipment (FF&E) deducted from the income stream of the going concern of the inn as a whole. The Blumenthal Appraisal, on pages C-3 and C-11, estimates the depreciated replacement cost of the FF&E and utilizes that to deduct both the return on and the return of the value of the FF&E. The reduction in the Blumenthal Appraisal's NOI is \$80,350 for 2004 and \$83,500 for 2005. The Walker Report also estimates a similar replacement cost based on information supplied by the Taxpayer but simply deducts the depreciated value of the personal property from the final value conclusion.

The board finds the Taxpayer failed in its burden to prove the deduction in the Blumenthal Appraisal for FF&E is reasonable. The board notes that capitalizing the FF&E deduction from the income stream indicates that the personal property contributed about \$765,000 in value in 2004 to the overall going concern and approximately \$735,000 in 2005. While the board recognizes the Property contains fairly extensive personal property items in the

food service and lodging components, such a value reduction which equates to approximately 1/3rd of the overall value of the going concern is disproportionate to the FF&E's contribution to the income stream.¹ As the board noted in its general findings, the major factor that influences the Inn Property's income as a going concern is its location and magnificent views. While good quality personal property is certainly appropriate to compliment the location and views, estimating that it comprises 1/3rd of the overall value is excessive and not in keeping with the board's experiences to the general contributory value of the various components of going concern properties. See Mount Washington Hotel Preservation Limited Partnership v. Town of Carroll, Docket Nos.: 18306-99PT and 18658-2000PT (November 26, 2003). Consequently, the board concludes the best evidence as to the FF&E contributory value is contained in the Walker Report and the board adopts it in its value calculations. While the Taxpayer asserted that the Walker Report estimates for FF&E "are simply not correct" and the Blumenthal Appraisal at C-11 noted "the owner's estimate of value for the FF&E is in excess of our replacement costs (value in use) estimates" the Taxpayer did not present either evidence or a compelling argument that the FF&E deduction constitutes approximately 1/3rd of the value of the overall Inn Property.

Both the Blumenthal Appraisal and the Walker Report determined that a nominal deduction of 5% of the reconciled value for good will or business value is appropriate. The board agrees there is nominal business value for the name recognition to the Inn Property, its established clientele and assembled workforce and is significantly less than that for a larger and more recognizable hotel such as the Mount Washington Hotel. Id. Further, the Lutter Response argued extensive education, training and compensation are necessary to have a proficient staff to

¹ The board's estimate of 1/3rd of the going-concern value is calculated by utilizing the Blumenthal Appraisal NOI's of \$237,000 and \$234,000 for 2004 and 2005, capitalizing them at the respective capitalization rates and comparing that to the capitalized value of the \$80,350 and \$83,500 deduction for FF&E on page C-3 of the Blumenthal Appraisal.

carry out the functions of the restaurant and lodging facilities. We agree and note that by basing the stabilized expenses on the Taxpayer's historical expenses, the expenses utilized in the Walker Report inherently captures and deducts the costs for any exceptional training or compensation aspects of their assembled workforce. This minimizes the need for any further substantial deduction for a business enterprise value from the ultimate value conclusion.

In summary the board finds the market value and assessed value for the Inn Property can be summarized as follows:

	2004	2005
Revised NOI (inclusive of 3% reserve/replacement)	\$ 213,460	\$ 213,460
Overall capitalization rate	.105	.1135
Inn Property going-concern value	\$2,033,000	\$1,881,000
Deduction for FF&E	\$ 150,000	\$ 150,000
Business Enterprise Value at 5% of overall market value	\$ 101,650	\$ 94,050
Indicated market value	\$1,781,350	\$1,636,950
Stipulated level of assessments	x 1.027	x.934
Indicated assessed value	\$1,829,450	\$1,528,900

The board did review the sales information contained in the Blumenthal Appraisal, the Walker Report and the Town's submissions. As noted in the general findings, due to the dissimilarities in the Properties and the inability to fully understand all the transaction conditions, the board is unable to place much weight on the sales comparison approach. However, the board finds that, in a general fashion, the range of sales support the income approach conclusion.

Golf Course Property

As noted in the board's general findings, the income approach is the best approach and, in fact, the only approach for which evidence was submitted to estimate the Golf Course Property's value.

The board has reviewed Mr. Lutter's golf course market value estimate contained in Taxpayer Exhibit No. 2 and the income approach estimate contained in the Walker Report. For the following reasons, the board finds the Walker Report calculation is the most accurate and again reflective as to how a prospective purchaser would value the Golf Course Property.

Mr. Lutter's income calculations were based on the 2002 through 2005 historical income and associated expenses for the golf course. However, as the testimony and the police report (Municipality Exhibit A) established, the individual managing the golf course during the time of the historical income and expense utilized embezzled a substantial but undeterminable amount of income. Before the Town entered the police report in as evidence at the hearing, Mr. Lutter had not been made aware of the embezzlement by the Hendersons and, thus, had not incorporated that factor in his income approach calculation. The board finds the Walker Report incorporates an estimate for lost income in an appropriate manner as anyone can given the uncertainty of the actual income that was embezzled over time.

As with the Inn Property, the board finds the Taxpayer presented insufficient evidence to support its argument for a further deduction for FF&E, particularly the golf carts and equipment for maintaining the Golf Course Property. The Golf Course Property's location with its spectacular views is a locational influence that is real estate related and greatly contributes to the generation of the majority of the income. The Walker Report estimated a \$25,000 deduction for the depreciated value of the equipment and, other than the assertions contained in the Lutter Response, insufficient evidence was submitted to show the \$25,000 deduction for FF&E was inappropriate.

In reaching its value conclusions for the Golf Course Property, the board is also mindful of the Taxpayer's purchase of the remaining rights of the Property in 2002 for \$298,000. The

Taxpayer asserted the purchase price could be considered a premium since they were abutters and wanted to maintain the view on that side of Sunset Hill Road. While it is difficult to separate out any abutter influence from the overall motivations involved in such a complicated conservation easement transaction, the board notes the Walker Report's market values of \$293,000 and \$279,600 for 2004 and 2005 respectively, are less than the sale price even during an appreciating market and, thus, to the extent there was any abutter's premium, the Walker Report's conclusions are reflective of that.

Some evidence, including photographs, was presented as to the poor condition of the clubhouse. The board does not doubt the clubhouse has relatively nominal contributory value but the evidence submitted by both parties (the Town's assessed value of \$54,200 and Mr. Lutter's presentation at hearing on the valuation of the golf course (Taxpayer Exhibit No. 2) of \$50,000) are very similar. Thus the board concludes the condition has been reasonably agreed to and accounted for in both those values.

In conclusion, the board finds the Walker Report's Golf Course Property market value estimate is reasonably calculated and the best evidence before it.

However, the Walker Report Appraisal for the Golf Course Property relates solely to the 26+/- acres and improvements that encompass the improved golf course area. To equate that market value finding to an assessed value necessitates a number of convoluted calculations. The Taxpayer and the Town have entered into an RSA ch. 79-C discretionary easement for the golf course area with dictates the 26+/- acres of the golf course be assessed at 75% of market value.

Further, the Walker Report value estimate does not encompass the non-golf course land that is assessed in current use. Consequently, the following calculations are necessary to utilize the Walker Report market value estimate and incorporate it into the proper assessment given the discretionary easement and the current use.

The 2004 Revised Assessed Value of the Golf Course Property	
Well and Septic	\$ 6,400 (assessment-record card) (“ARC”)
Building	\$ 54,200 (ARC)
35.86 acres in current use	\$ 2,928 (ARC)
26 acres subject to discretionary easement at 75% of market value	\$180,200*
Total revised assessed value	\$243,728

* Walker Report market value for 26 acre golf course area: \$293,000.

Deduct equalized well and septic value:	- \$6,200 (\$6,400/1.027).
Deduct equalized value of clubhouse:	- <u>\$52,800 (\$54,200/ 1.027)</u>
Total net market value for 26+/- acre golf course:	\$234,000
	x .75 (discretionary easement)
	<u>x 1.027 (level of assessment)</u>
Total net assessed value for 26+/- acre golf course:	\$180,200.

The 2005 Revised Assessed Value of the Golf Course Property	
Well and Septic	\$ 6,400 (ARC)
Clubhouse	\$ 54,200 (ARC)
35.86 acres in current use	\$ 2,928 (ARC)
26 acres subject to discretionary easement	\$150,000**
Total revised assessed value	\$213,528

** Walker Report market value for 26 acre golf course area: \$279,000.

Deduct equalized well and septic value: -\$6,850 (\$6,400/.934).

Deduct equalized value of clubhouse: -\$58,000 (\$54,200/ .934)

Total net market value for 26+/- acre golf course: \$214,150

x.75 (discretionary easement)

x .934 (level of assessment)

Total net assessed value for 26+/- acre golf course: \$150,000.

In summary, the board finds the assessed value of the Taxpayer's two individual properties and its entire estate can be summarized as follows:

FOR TAX YEAR 2004	
Inn Property	\$1,829,450
Golf Course Property	\$ 243,728
Total assessed value of Taxpayer's Estate	\$2,073,178

FOR TAX YEAR 2005	
Inn Property	\$1,528,900
Golf Course Property	\$ 213,528
Total assessed value of Taxpayer's Estate	\$1,742,428

Because the combined assessed values found by the board of the Inn Property and the Golf Course Property are less each year than the combined assessed value of the Taxpayer's entire estate (See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985)), the board orders an abatement for each year.

If the taxes have been paid, the amount paid on the value in excess of the amount found above shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:17-a.

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: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Steve Allen, Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, representative for the Municipality; and Chairman, Board of Selectmen, Town of Sugar Hill, PO Box 574, Sugar Hill, NH 03585.

Date: 9/26/08

Anne M. Stelmach, Clerk

Henderson Holdings at Sugar Hill, LLC

v.

Town of Sugar Hill

Docket Nos.: 21034-04PT/22385-05PT

ORDER

This Order responds to the “Town’s” October 24, 2008 Motion for Partial Reconsideration (“Motion”) and the “Taxpayer’s” November 4, 2008 “Reply.”² The board’s November 4, 2008 suspension Order is hereby removed. For the reasons that follow, the Motion is denied.

The board issued a Decision on September 26, 2008 addressing the consolidated appeals (captioned above) for the 2004 and 2005 tax years. Utilizing the income approach, the board arrived at distinct market value findings for each tax year and applied the stipulated levels of assessments of 1.027 for tax year 2004 and 0.934 for tax year 2005. The Decision ordered the 2004 total assessments be abated to \$2,073,178 and the 2005 total assessments be abated to \$1,742,428.

The Motion raises the sole legal argument that, pursuant to RSA 76:17-c, the abated assessment for 2004 should apply to the 2005 tax year and any subsequent tax years until the

² There is currently before the board a nearly identical motion filed by the City of Lebanon in John W. Manchester v. City of Lebanon, Docket Nos. 21941-05PT/22911-06PT/23412-07PT. Given the analogous facts of both cases and the analogous arguments presented in the respective motions, the board’s orders are similar and issued concurrently.

“Property” is reappraised pursuant to RSA 75:8 or until there is a general reassessment in the municipality. The Motion asserts this is the proper reading and application of RSA 76:17-c because the Property’s assessment for subsequent years had not changed from the original 2004 total assessment of \$2,104,191. The Reply asserts the Town has misinterpreted the application of

RSA 76:17-c and that the subsequent years should be abated to the 2005 ordered assessment.

The board finds the Motion’s conclusion is a strained reading of RSA 76:17-c and would result in an absurd and unintended consequence, if applied. A statute should not be construed to lead to an absurd result. General Electric Co. v. Dole Co., 105 N.H. 477, 479 (1964). The practical result of the Town’s interpretation would preclude this Taxpayer (and indeed any taxpayer) from filing multiple year abatements (pursuant to RSA 76:16) and appeals (pursuant to RSA 76:16-a or 17) if an assessment does not change before the next five year periodic reassessment. (See N.H. CONST. pt. II, art. 6 and RSA 75:8-a.) The collective reading of all the applicable statutes clearly indicate the legislature intended “any person aggrieved by the assessment of a tax...” (RSA 76:16) to be able to annually review and challenge such assessment. The board must read the language at issue in the context of the entire statute and the statutory scheme. See, e.g., Pennelli v. Town of Pelham, 148 N.H. 365, 366 and 368 – 369 (2002); Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992); and Great Lakes Aircraft Co. v. City of Claremont, 135 N.H. 270, 277 (1992).

A review of the overarching statutory scheme of administering New Hampshire’s property tax is instructive. RSA ch. 72 identifies what property rights are taxable; RSA ch. 73 establishes who is liable to be taxed; RSA ch. 74 establishes the responsibility and process for assessors to inventory taxable property (specifically, RSA 74:1 notes assessors must take an

annual inventory as of April 1 each tax year (RSA 76:2)); RSA 75:1 establishes the market or current use valuation bases for valuing property inventoried as of April 1 of each year; and collectively RSA 76:16, 16-a and 17 grants “any person aggrieved” by the annual assessment of the property tax the right to file an abatement and appeal such tax. Nowhere in this entire statutory scheme and, certainly not in RSA 76:17-c, does the legislature restrict taxpayers to filing only one abatement and appeal in one tax year, and not a subsequent one, if the assessment remains the same. (The board notes the legislature, if it believes a broad restriction to one filing is appropriate, is clearly capable of so enunciating another outcome as it did in RSA 71-B:16, I, where a taxpayer appealing the assessment of another taxpayer can only file one complaint “for each parcel of land until such time as a reassessment has been made.”) The statute’s words are the touchstone of the legislature’s intention. Thus, the legislative intent is based not on what the legislature might have intended, but rather, on what was stated in the statute. See Pennelli, 148 N.H. at 368 – 69; and State v. Dushame, 136 N.H. 309, 314 (1992).

Indeed this annual “auditing” of government’s assessment of annual property taxes (review and potential filing of abatements and appeals by taxpayers) is very much in keeping with the overall statutory scheme the legislature has established for administering property taxes. After assessing and noticing taxpayers of their proportionate share of the tax burden by the issuing of the annual tax bills (see RSA 76:1-a (notice of tax date); RSA 76:10 (selectmen’s assessment warrant); RSA 76:11 (tax bill notice to taxpayers)), aggrieved taxpayers have annual deadlines in RSA 76:16 and 16-a for filing any abatements and appeals challenging the inventory of taxable property, who is liable for taxation or the valuation of taxable property. This statutory scheme clearly envisions aggrieved taxpayers to be able to annually seek redress, if done in a timely fashion, from the annual assessment of a tax.

The Motion's assertion also disregards the principle that proportionate assessments result from the continual interplay between the market value of taxable property and the general level of assessment of a taxing jurisdiction. In this regard, paragraph 8 of the Motion incorrectly construes the holdings of the cited cases. The valuation bases of market and current use embodied in RSA 75:1 are the starting points for achieving proportional assessments but such "appraised values" only become "assessed values" once they are equalized to the level of assessment within the taxing jurisdiction. The enactment of RSA 76:17-c in 1992 did not negate the long history of case law that proportionality is determined in each tax year by finding a property's market value and equalizing it to the common level of assessment within the taxing jurisdiction.

[W]e are convinced that the ideal of fair and proportionate taxation can be approached only through a constant process of correction and adjustment of assessments. RSA 75:8, indeed, requires selectmen and assessors to engage in just such continual revision by examining appraisals for error each year. This candid statutory recognition of the need for constant corrective effort is antithetical to any legal doctrine that would invest a given valuation of property with preclusive effect for the future, so that any error would affect subsequent assessments indefinitely. Where a single taxpayer was the losing party in the first proceeding, the preclusive effect of such an error could be disastrous to him. Where the public was the loser, preclusive effect would just as certainly perpetuate unfairness. The risk of such results is too high a price to pay for the judicial economy and consistency that collateral estoppel is designed to provide. Appeal of Net Realty Holding Trust, 128 N.H. 795, 799 (1986).

In order to determine the appropriate assessed value for a property, the board must make specific findings regarding the property's market value and the equalization ratio by which to discount the market value to an assessed value. See Appeal of Loudon Road Realty Trust, 128 N.H. 624, 626-27, 517 A.2d 843, 845 (1986). Appeal of City of Nashua, 138 N.H. 261, 263 (1994).

The plaintiff may show that its property is being taxed disproportionately by establishing the fair market value of the property for the tax years in question, comparing it to the assessed value, and establishing by agreement or otherwise, the equalization ratio used in the assessment of property in the taxing district

during the disputed years. See [Milford Properties, Inc. v. Town of Milford, 119 N.H. 165, 400 A.2d 41 \(1979\)](#). See generally [Duval v. City of Manchester, 111 N.H. 375, 286 A.2d 612 \(1971\)](#). [Wise Shoe Co., Inc. v. Town of Exeter, 119 N.H. 700, 701 \(1979\)](#).

Here, because the Taxpayer filed abatement requests and appeals for both tax years 2004 and 2005, the board has the jurisdiction, and in fact the obligation as the *de novo* appellate body (see RSA 71-B:11 and RSA 75:8), to find proportional assessments by determining the market/current use value of the taxable property and then adjusting it by each tax year's stipulated levels of assessment. To only make such findings for the original year and not for any subsequent year properly brought before the board (see RSA 71-B:5, I (board has the authority "[t]o hear and determine all matters involving questions of taxation properly brought before it.)) would deprive taxpayers of the significant rights provided by the N.H. CONST. (pt. I, art. 12) and the various statutes referenced above.

Further, because the board found the Property's market values and the levels of assessment were different for the two years under appeal, proportionality is best achieved by finding distinct assessments for 2004 and 2005. Because the market value for different types of properties (land, residential, commercial, waterfront, industrial, etc.) usually changes at varying rates, proportionality is tested and achieved by estimating a property's market value as of April 1 each year and equalizing it to the municipality's level of assessment. This is exactly what the statutes provide for and indeed what occurred in the consolidated appeals in this matter.

Moreover, acceptance of the Motion's application of RSA 76:17-c could result in unanticipated and absurd results. For example, if a municipality performs a reassessment in year one and does not perform another reassessment until year five, but sometime during those intervening years the property is transferred from one taxpayer to another, a subsequent owner,

“aggrieved by the assessment of a tax” would be precluded from filing an abatement and appeal if the prior owner had done so for any intervening year. This absurd conclusion does not comport with the simple reading of statutes that allow taxpayers to annually file abatements and appeals even if the assessment has not changed.

The board’s rules also anticipate the fact scenario at issue here. Tax 203.05 addresses how the provisions of RSA 76:17-c apply when an “original appeal” (in this case, 2004) and “subsequent appeal(s)” (2005) are filed with the board. Specifically, Tax 203.05(e) states “the board shall ... consider and issue a decision on the property and the assessments for the original tax year and the subsequent tax years from which the subsequent tax appeal was taken, but the board shall not issue a decision on any other tax year.” In keeping with this rule, the Decision ordered abatements for only the two years on appeal, and the effect of RSA 76:17-c on any subsequent but non-appealed years is to abate to the ordered 2005 assessment until an RSA 75:8 reappraisal or general reassessment occurs.

Having denied the Motion, any appeal to the Supreme Court must be filed within thirty (30) days of the date of this Order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

Henderson Holdings at Sugar Hill, LLC v. Town of Sugar Hill

Docket Nos.: 21034-04PT/22385-05PT

Page 23 of 25

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Sugar Hill, PO Box 574, Sugar Hill, NH 03585; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street, Lebanon, NH 03766, counsel for the Town; and Steve Allen, Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: December 19, 2008

Anne M. Stelmach, Clerk

Henderson Holdings at Sugar Hill, LLC

v.

Town of Sugar Hill

Docket Nos.: 21034-04PT/22385-05PT/23853-07PT

ORDER

This Order responds to the “Taxpayer’s” Motion for Clarification (“Motion”) filed by the Taxpayer’s representative, Mr. Mark Lutter, on May 8, 2009. For the following reason, the board denies the Motion.

The Motion seeks clarification of the board’s ruling in its December 19, 2008 order responding to the Town’s October 24, 2008 “Motion for Partial Reconsideration” (and recited recently in the board’s April 7, 2009 order denying the Taxpayer’s March 17, 2009 “Motion for Enforcement”) that the abatement ordered in the board’s September 26, 2008 decision and the effect of RSA 76:17-c related to “any subsequent but non-appealed years....” Inasmuch as the issue raised in the Motion relates to the board’s ruling in its December 19, 2008 order, the Motion is untimely pursuant to RSA 541:3 and Tax 201.37 which require motions for rehearing, reconsideration or clarification be filed “[w]ithin thirty (30) days of any order or decision... in respect to any matter determined in the action or proceeding, or covered or included in the order....” RSA 541:3.

Moreover, the Taxpayer has within its control to decide whether to proceed with the 2007 appeal (Docket No. 23853-07PT) pending with the board or to withdraw it. The parties have filed the "Report of Settlement Meeting and Order" indicating a hearing is necessary in the 2007 appeal; consequently, unless the Taxpayer files a withdrawal within thirty (30) days of the clerk's date on this order, the board will schedule the 2007 appeal for hearing.

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 Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Sugar Hill, PO Box 574, Sugar Hill, NH 03585; Adele M. Fulton, Esq., Gardner, Fulton & Waugh, PLLC, 78 Bank Street Lebanon, NH 03766, counsel for the Town; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: May 20, 2009

Anne M. Stelmach, Clerk