

**Arthur Gasses Revocable Trust**

v.

**City of Dover**

**Docket Nos.: 21073-04PT/21942-05PT/22916-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” ad valorem assessments on Lot J0001-000000 at 120 Garrison Road (the “Property”), a 34 acre parcel of land, with 29 acres in current use (“CU”) and 5 acres not in current use (“NICU”) with buildings for three tax years: for tax year 2004 – \$492,700 (\$184,500 land NICU and \$302,000 buildings, plus \$6,200 CU, undisputed); for tax year 2005 – \$507,500 (\$184,500 land NICU and \$316,800 buildings, plus \$6,200 CU, undisputed); and for tax year 2006 – \$517,800 (\$183,900 land NICU and \$327,700 buildings, plus \$6,200 CU, undisputed). The Taxpayer also owns Lot J0001-B00000 at 122 Garrison Road, but did not appeal the assessment and the parties agreed this other property was proportionately assessed.

For the reasons stated below, the appeal for abatement on the Property is granted.

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) 5 acres of land NICU is overassessed based on the valuation models shown in Taxpayer Exhibit No. 2, which is preferable to the method employed by the City;
- (2) the Taxpayer's valuation model concludes that land NICU with waterfront should have a value ranging between \$75,000 and \$130,000 based on three possible ways to assess as contained in Taxpayer Exhibit No. 1; and
- (3) the improvements are overassessed based on replacement cost calculations contained in Taxpayer Exhibit No. 2.

The City argued the assessments, with the building adjustments noted below, are proper because:

- (1) the City does annual updates and is always trying to 'catch up' to waterfront land values, which have appreciated considerably;
- (2) the City uses a consistent methodology in its CAMA system, using a 1 acre base rate and 200 feet of water frontage and then making appropriate adjustments where necessary;
- (3) the City adjusted the land NICU for it being in a neighborhood where the Bellamy River narrows, for the presence of power lines and for the remote location of the land NICU from the river;
- (4) the City, after review of the Property, recommended adjustments to the dwelling on card 2 to reflect that it is primarily a garage with residential finish on the second floor; and
- (5) the revised assessments recommended by the City, as shown on Municipality Exhibit No. C, are \$438,200 for tax year 2004; \$451,400 for tax year 2005; and \$460,800 for tax year 2006.

The parties agreed the levels of assessment in the City for tax years 2004, 2005 and 2006 were 95.2%, 89.0% and 94.9%, respectively (as measured by the median ratios calculated by the department of revenue administration).

### **Board's Rulings**

The evidence presented in this case focuses on two general issues: 1) what is the Property's assessed value of the 5 acres NICU; and 2) what are the contributory values of the various improvements of the Property?

#### **5 Acres NICU**

The City, in Municipality Exhibit No. A at page 6, detailed its calculations for the 5 acres NICU. The City assessed the primary acre site at \$133,000 adjusted by .75 for "neighborhood transition as river narrows". The remaining four acres were assessed at \$7,700 per acre, adjusted x .9 for the presence of "high tension lines on residential land". The City also calculated a waterfront attribution value by reducing the base rate of \$150,000 (the value for 200 feet of river frontage that benefits the primary acre site) by x .38 which is a composite factor of .50 for the primary site being "remote from the water, with no view" and a .75 factor for "neighborhood transition as river narrows."

The Taxpayer submitted three possible scenarios as how to arrive at the 5 acres NICU value based on a comparison to a similar property directly across the road, a value of \$15,000 per acre for acreage unrelated to distant waterfront (Taxpayer Exhibit No. 2, chart D) and as acreage with waterfront at \$26,000 per acre (Taxpayer Exhibit No. 2, chart D).

The board finds neither approach concludes with a value that proportionately values the rights embodied in the 5 acres NICU; although we find the City's methodology has the capability to consider the factors that affect the value of the 5 acres NICU. See Paras v. City of

Portsmouth, 115 N.H. 63, 67-68 (1975) (in arriving at a proper assessment, the municipality must look at all relevant factors). The challenge in assessing any land NICU is to adhere to both the provisions of RSA 79-A which recognizes assessing eligible property at current use values is a valuable tool to encourage the preservation of open spaces with the concurrent requirement of RSA 75:1 to assess property not eligible for current use at its market value. In appraising any property, the first step is to identify the property rights to be valued. Similarly to properly arrive at the value for the property rights associated with land NICU, those rights that are embodied in that land must be identified and any factor affecting their value must be considered.

The board's reasoning is reflected in the following passage from Ford v. Town of Durham, BTLA Docket Nos. 19576-02PT and 20391-03PT (March 29, 2005):

The board has long acknowledged, however, the difficulty in fairly assessing LNICU that is surrounded by value-enhancing attributes of land that is in current use. As first enunciated in John L. Arnold v. Town of Frankestown, BTLA Docket Nos.: 08718-90PT, 11152-91PT and 13819-93PT (December 8, 1994) and in several subsequent cases, there is no one technical or mechanical way of determining the proper value of the LNICU. However, as is discussed in Arnold:

In most properties there are many factors that influence value and contribute to the determination of the highest and best use. Such factors are nearly endless but commonly included influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view and zoning. In valuing an unrestricted property, the effect of various value influencing factors are normally viewed collectively. However, in reality, such factors are rarely distributed evenly throughout the property. Some portion of a property may embody certain factors more than other portions. For example, the area of a lot that contains improvements is more valuable than unimproved areas, and the location on a lot from which a view is obtained is generally more valuable than obscured locations.

However, when a property is subject to current use assessment, certain rights and value influencing factors are temporarily veiled and not valued for taxation purposes. N.H. Const. pt. II, art. 5-B; RSA 75:1; chap. 79-A. These rights and factors still exist and are held by the owners, but they are suppressed or restricted by current use for tax purposes until sometime in the future when the land that embodies those rights or value influencing factors no longer qualifies for current

use and is then assessed at market value. Land not in current use (LNICU) does not have its rights or factors restricted by current use assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the LNICU and any effect the balance of the property has on the LNICU. *Id.* at pp. 5-6. (Emphasis added.)

Here the 5 acres NICU appear to be mostly flat or rolling open land that supports the various improvements and maintained curtilage. While the 5 acres are not adjacent to the Bellamy River, they do have the right of access to the river, albeit distant and with power lines and a gravel pit in between. These factors of remote river access and nearby power lines need to be considered in arriving at the market value of the land NICU.

The board has reviewed the Taxpayer's Exhibit No. 2 but is unable to place any weight on the analysis contained therein to form a basis for estimating the market value of the 5 acres NICU. The board finds the City's methodology is reasonable of attributing value to the primary site, adding value for the 4 acres of supplemental land and then trying to estimate any value attribution to those 5 acres as part of the larger estate with frontage on and access to the Bellamy River. However, the board disagrees the City has correctly weighed and considered all appropriate factors. In this case the board finds the riverfront access is so remote that even the City's .50 factor does not adequately reduce the riverfront value attributable to the 5 acres NICU and the board has adjusted it to .25, or minus .75. Further, to get to the riverfront from the 5 acres NICU, one would have to go under existing power lines and through or by a gravel pit, both of which are negative factors affecting the market value of the 5 acres NICU. Consequently the board has applied the same .9 factor for the power lines to the water frontage calculation as the City has to the supplemental four acres. Performing those calculations results in an indicated assessed value for the 5 acres NICU of \$153,000 (rounded).

Based on the general testimony provided by the City, which indicated that the residential lots in Dover were generally in the \$120,000-\$150,000 range, the board finds the upper end of that range for 5 acres NICU with the distant access to the river is a reasonable value estimate for the rights embodied in the 5 acres NICU.

### Improvement Values

In valuing the improvements the parties focused on three general areas, a rental dwelling, the owner-occupied dwelling and the quonset shed.

The City at hearing submitted Municipality Exhibit No. C where it proposed revising the value of the owner's dwelling on card 2 to reflect its construction was primarily as a garage with second floor finish. The Taxpayer's representative submitted various replacement costs estimates derived from Marshall Valuation Service as part of Taxpayer Exhibit No. 2.

After review of all the parties' submissions and reviewing in detail the assessment-records submitted, the board makes the following findings relative to the various improvements.

### Dwelling (Rental) on Card 1

The board finds the best evidence of this improvement's contributory value is contained in the City's assessment-record card replacement cost estimate of the dwelling. While the board does not dismiss outright the Taxpayer's own replacement cost calculations in Taxpayer Exhibit No. 2, we give them less weight because they do not appear to contain an adjustment for the "extreme" climate location of the Property and a number of the calculations and the methodology using the Marshall Valuation Service are difficult to understand. On the other hand, the board believes the City's cost approach calculations overstate the grade of the dwelling and do not account for the fact that it is primarily a garage on slab with interior finish. Such types of dwellings that do not have the benefit and utility of a basement are generally not as desirable in

the market as those with full basements. The board also notes the April 1, 2007 assessment-record card attached to Municipality Exhibit No. C lowered the grade of the card 1 dwelling from a B- in 2006 to C+ which we find, based on the board's experience and knowledge, to be more reflective of the grade of a converted garage type dwelling. Consequently, the board has applied a market adjust factor of .80 to the cost approach computations on each one of the three assessment-record cards for the tax years under appeal to account for the slightly higher grade notation and the lack of utility of a full basement. The board acknowledges the City's cost approach computation deducts for the cost of the lack of a full basement, but the board's experience leads it to find an additional functional obsolescence needs to be applied for the reduced market desirability for slab construction.

Dwelling (Owner-Occupied) on Card 2

The board finds the best evidence of the contributory value of the owner-occupied dwelling is as calculated on card 2 of the City's revised 2007 assessment-record cards attached to Municipality Exhibit No. C. As the City testified at hearing, upon review of the Property, it changed its basis of calculating the replacement cost of the card 2 dwelling from a residential schedule to a garage schedule with interior finish. The board agrees given the history of the building and its retrofitted living area. In comparing the 2007 assessment-record card with the 2004-2006 assessment-record cards, the board notes that the last four "outbuilding" entries in the 2007 card 2 appear to relate to the owner's dwelling as they capture the garage with finish plus the decks associated with it. Thus, the board has added those last four items (total assessed value \$53,440) as an indication of a 2007 assessed value for the owner's dwelling. However, the 2007 assessment-record cards reflect slight building base rate adjustments from the assessment-record cards of the three years under appeal and no evidence was presented of how to relate the 2007

value back to the prior years. To make such an adjustment, the board has done a comparison of the change of base values for the residential garage contained in the 2004-2006 assessment-record cards and concludes that the base rate has increased by approximately 3% per year during that time period. Consequently the board has reduced the 2007 assessed value for the second dwelling of \$53,440 by 3% for each of the years under appeal.

#### Quonset Shed

In the three assessment-record cards for the years under appeal the City has this structure listed as an "RS-1" outbuilding with an assessed value each year at approximately \$10,000. However, on the 2007 assessment-record card attached to Municipality Exhibit No. C the City has revised that structure to an "RG-1" with a value of \$15,890. The board reviewed the Taxpayer's Marshall Valuation Service calculations contained in Taxpayer Exhibit No. 2 and on its own reviewed Marshall Valuation Service for steel sheds for general farm purposes. The replacement costs estimated by the Taxpayer appear to be reasonable at approximately \$12-\$13 per square foot for this type of structure. However, the depreciation taken in the Taxpayer's replacement cost calculation was 79%, which appears to be an error in reviewing the Marshall Valuation Service depreciation charts. (79% is the depreciation for a 20 year life expectancy building with all 20 years having expired.) The building was constructed in 2003 and based on the photographs is in good condition for its age. Consequently the board has applied a nominal 5-10% deprecation to the replacement cost calculations and estimated its contributory market value to be \$7,000 for each of the three years under appeal.

For ease of comparison and summary, the board has put in tabular form the City's assessments and its various components for the three years under appeal and the board's adjustments as detailed above.

	City 2004	City 2005	City 2006	BTLA 2004	BTLA 2005	BTLA 2006
5 Acres NICU	\$184,500	\$184,500	\$183,900	\$153,000	\$153,000	\$153,000
CU Land	\$6,200	\$6,200	\$6,200	\$6,200	\$6,200	\$6,200
Total Land Assessed Value	\$190,700	\$190,700	\$190,100	\$159,200	\$159,200	\$159,200
Card 1 Dwelling	\$137,500	\$144,800	\$149,700	\$110,000	\$115,900	\$119,700
AL1	\$2,460	\$2,440	\$2,910	\$2,460	\$2,440	\$2,910
RG3	\$27,660	\$28,400	\$29,290	\$27,660	\$28,400	\$29,290
RS1	\$2,000	\$1,990	\$2,370	\$2,000	\$1,990	\$2,370
RS1 Quonset Bldg.	\$9,890	\$10,090	\$9,980	\$7,000	\$7,000	\$7,000
Card 2 Dwelling	\$122,500	\$129,100	\$133,400	\$48,700	\$50,200	\$51,800
Total Building Assessed Value	\$302,010	\$316,820	\$327,650	\$197,820	\$205,930	\$213,070
<b>Total Land &amp; Building Assessed Value (Rounded)</b>	<b>\$492,700</b>	<b>\$507,500</b>	<b>\$517,800</b>	<b>\$357,000</b>	<b>\$365,100</b>	<b>\$372,300</b>

The board has reviewed the balance of assessments, including the multi-bay garage, and finds the City’s calculations and assessments to be reasonable and in line with their contributory value to the Property as a whole.

If the taxes have been paid, the amount paid on the value in excess of \$357,000 for 2004; \$365,100 for 2005; and \$372,300 for 2006 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years. RSA 76:17-c, I and II.

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: David Irwin, Tax Choice Services, PO Box 1297, Hillsboro, NH 03244, Taxpayer Representative; and Chairman, City Council, City of Dover, 288 Central Avenue, Dover, NH 03820.

Date:

---

Anne M. Stelmach, Clerk