

**Patrick R. Brady**

**v.**

**City of Dover**

**Docket Nos.: 21076-04PT/21944-05PT/22914-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” ad valorem assessments for three tax years on two parcels on Three Rivers Farm Road (collectively, the “Property”):

- (1) Parcel N-2-4 is a 13.2 acre parcel of land with 11.4 acres in current use (“CU”) and 1.8 acres not in current use (“NICU”) with a single family residence assessed at -- \$429,250 in tax year 2004 (\$305,280 land NICU and \$121,600 buildings, plus \$2,370 CU, undisputed); \$471,100 (rounded) in tax year 2005 (\$305,280 land NICU and \$163,400 buildings, plus \$2,370 CU, undisputed); and \$425,500 (rounded) in tax year 2006 (\$254,000 land NICU and \$169,100 buildings, plus \$2,370 CU, undisputed); and
- (2) Parcel N-3-1 is a 11.0 acre vacant parcel of land with 10 acres in CU and 1 acre NICU, assessed at -- \$120,200 (rounded) in tax year 2004 (\$115,000 land NICU, plus \$5,230 CU, undisputed); \$120,200 (rounded) in tax year 2005 (\$115,000 land NICU, plus \$5,230 CU, undisputed); and \$155,200 (rounded) in tax year 2006 (\$150,000 land NICU, plus \$5,230 CU, undisputed).

The total ad valorem assessments on the Property were \$549,500 in tax year 2004, \$591,300 in tax year 2005 and \$580,700 in tax year 2006.

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) the Taxpayer purchased each parcel in 2000 for \$300,000;
- (2) the purchase prices "reasonably time trended to 4/1/04" indicate a value of \$447,000 for each parcel;
- (3) the Taxpayer constructed a house with additions on the homesite on Parcel N-2-4 and demolished the house on Parcel N-3-1, leaving that homesite vacant;
- (4) the tax map lists 898 feet of river frontage (on the Salmon Falls River) for Parcel N-2-4, but approximately 300 feet is tidal marsh, and the City's assessment-record cards show 600 feet of river frontage in tax years 2004 and 2005 and 600 plus 520 feet of river frontage in tax year 2006;
- (5) the Taxpayer's valuation model concludes the land NICU should be assessed based on a market value ranging from \$143,143 to \$158,037, utilizing the methodology stated in Taxpayer Exhibit No. 1, adjusted by the level of assessment in the Town for each tax year;
- (6) the building is also overassessed because its estimated replacement cost is \$94,648 in tax year 2004, \$124,550 in tax year 2005 and \$146,254 in tax year 2006;

(7) the City's higher building value in tax year 2004 results, in part, from failing to recognize a 16 x 11 addition was constructed after the April 1, 2004 assessment date; and

(8) the Property is entitled to a substantial abatement.

The City argued the assessments were 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 applied a minus 20% "topo and access" (topography and access) adjustment to the land NICU in tax years 2004 and 2005 and a minus 50% adjustment in tax year 2006 and no further adjustments are warranted; and

(4) the City's building values are based on both cost and market evidence consistently applied.

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 are the proper assessed values for the 1.8 acres of land NICU on Parcel N-2-4 and 1 acre of land NICU on Parcel N-3-1?; and 2) what are the contributory value of the improvements on Parcel N-2-4?

Land NICU

The City, in Municipality Exhibit No. A at page 7, detailed its calculations for the land NICU. For tax year 2004 (and tax year 2005, when the land assessment did not change), the City assessed the 1.8 acres on Parcel N-2-4 as having a 1 acre primary “homesite” and 0.8 acres of “residual land.” The City assessed the homesite at a \$133,000 base value, plus \$240,000 for the waterfront component (\$1,200 per foot x 200 front feet base value), both adjusted by a minus 20% “topo and access” adjustment and added \$6,880 for the 0.8 acres of residual land (80% of \$8,600 per acre), resulting in an assessment of \$305,280 for the land NICU on Parcel N-2-4 for tax years 2004 and 2005. For parcel N-3-1 in these tax years, the City assessed the 1 acre NICU at an \$115,000 base value with no adjustments. See Municipality Exhibit No. A, p. 3.

For tax year 2006, the City used a base value of \$150,000 per acre for both parcels. On Parcel N-2-4, the City appears to have again applied a minus 20 percent “topography” adjustment, but a larger adjustment (minus 50%) to the waterfront component and added \$9,280 for the 0.8 acres of residual land (80% of \$11,600 per acre) to assess the 1.8 acres NICU at \$254,000. On Parcel N-3-1, the 1 acre NICU was assessed at \$150,000 with no adjustments. Id.

For the reasons explained below, the board finds the primary 1 acre of land NICU on Parcel N-2-4 should be adjusted further by a minus 5% factor to result in a proportional assessment in each tax year. Arithmetically, for tax years 2004 and 2005, the result is \$283,500 (rounded) ( $[\$133,000 + \$240,000] \times .8 \times .95$ ). For tax year 2006, the result is \$228,000 ( $\$150,000 \times 0.8 \times .95 + \$240,000 \times .5 \times .95$ ). The Taxpayer did not specifically challenge the relatively nominal assessments on the additional 0.8 acres of land NICU (\$6,880 for tax years 2004 and 2005 and \$9,280 for tax year 2005). On Parcel N-3-1, however, the board finds no basis for adjusting the assessments for the land NICU because the 1 acre NICU values of

\$115,000 and \$150,000 are in the market value range of house lots without water influence, as testified to by the City.

The board finds land NICU adjacent to waterfront land in CU held by the same owner can enjoy many, if not all, of the value enhancing attributes of waterfront land. Here, the land NICU on Parcel N-2-4 is physically quite close to the waterfront and enjoys what the City describes as “unfettered access” to the water, and “all the rights of enjoyment of the view, location, passive recreation” and so forth. Municipality Exhibit No. A, p. 6. The photographs reflect the Taxpayer has cleared much of the land in CU and now enjoys expansive views of the water from the land NICU which no doubt adds more value to it than a partially encumbered view across uncleared land would have. These expansive views suggest only a very modest minus 5% adjustment is appropriate (rather than minus 10% or some larger factor).

Both parties cite a number of prior appeals where the board has considered and ruled on similar arguments regarding proportional assessments when there is land in CU and land NICU. The board finds Ford v. Town of Durham, BTLA Docket No. 19576-02PT and 20391-03PT (March 29, 2005), to be some precedent to the adjustment appropriate in these appeals. In Ford, the land NICU (Lot 5) was separated from the waterfront (Great Bay) by a 10 – 30 feet strip on Lot 4, also owned by the same taxpayer). The board concluded a minus 10% (approximate) adjustment to the assessment of Lot 5 was appropriate, while recognizing “there is no technical or mechanical way of determining the proper value of the land NICU.” Another precedent of some relevance is the board’s recent decision in Maine v. Town of Deering, BTLA Docket No. 21111-04PT (June 13, 2007) where the board reduced the municipality’s condition factor for land NICU by a further 6.25% (from 400 to 375) “to account for the control rights inherent in the

current use land surrounding the NICU.”<sup>1</sup> Both Ford and Maine cited Arnold v. Town of Francestown, BTLA Docket No. 08718-90PT (December 8, 1994) and other appeals where the board has recognized the general concept that land in CU has its market value “temporarily veiled” for taxation purposes but that adjacent land NICU may have its own value enhanced because of its proximity to the other land.<sup>2</sup> Cf. 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 Taxpayer, as noted above, argues for much lower assessments based upon the methodology presented in Taxpayer Exhibit No. 2. While that methodology might have some plausibility in a municipality where there are a number of comparable sales of similar size and attributes (11 – 15 acres, with 1 acre NICU, for example), the board finds this methodology is not appropriate for the heterogeneous land parcels that exist in the City and their lack of sufficiently similar attributes, especially with respect to waterfront amenities such as distance, view, topography and so forth. A mechanical averaging of “waterfront and nonwaterfront land sales,” see Taxpayer Exhibit No. 1, to estimate how much of the value should be attributed to the waterfront when its value is veiled by CU is an unreliable method of determining whether the land NICU assessments were disproportional in these appeals.

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<sup>1</sup> Accord, Nelson v. Town of Deering, BTLA Docket No. 21259-04PT (June 13, 2007), a companion tax appeal decided on the same date as Maine.

<sup>2</sup> The parties have also cited Lovett v. Town of Sutton, BTLA Docket No. 15100-94PT (September 16, 1996). In that appeal, the board rejected the taxpayer’s argument that land NICU approximately 100 feet from the waterfront should be valued strictly as “rear land”; the board denied the appeal after considering the municipality’s own application of a 50% reduction in the waterfront value and finding the taxpayer had failed to meet his burden of proving any greater abatement was warranted. Nothing in Lovett, however, suggests a 50% reduction is either customary or appropriate in every situation involving waterfront land and adjacent land NICU.

Improvement Values

The parties also disagree regarding the improvement values on Parcel N-2-4. The City's assessments on the improvements were \$121,600 in tax year 2004, \$163,400 in tax year 2005 and \$169,100 in tax year 2006. Taxpayer Exhibit No. 2 estimates a somewhat lower "replacement costs": \$94,648 in tax year 2004, \$124,450 in tax year 2005 and \$124,550 in tax year 2006, but, as the City noted at the hearing, this calculation may be in error because it fails to account for "extreme" climate adjustments to the valuation estimates used (apparently derived from the Marshall Valuation Service publication).

The board notes building improvements were added on gradually by the Taxpayer over several years. (See, for example, the photographs in Municipality Exhibit No. A, pp. 4 and 5.) Designations on the Town's assessment-record cards indicate the Property was physically inspected on June 2, 2004 and two items (an 11 x 16 addition and an open frame porch) were assessed in 2004 at \$16,200 as if they had been constructed by the assessment date (April 1, 2004). The Taxpayer testified, however, that these items were not in place as of the assessment date and the board finds his testimony to be credible. Consequently, the board abates the 2004 total building assessment to \$105,100 (rounded) for this reason.

In summary, while the Taxpayer failed to meet its burden of proof on the valuation theories espoused for land NICU, the board finds an abatement is appropriate, in each tax year, with respect to Parcel N-2-4 only, as follows: for tax year 2004, the assessment should be abated to \$390,970 (\$283,500 land NICU and \$105,100 buildings, plus \$2,370 CU, undisputed); for tax year 2005, the assessment should be abated to \$449,270 (\$283,500 land NICU and \$163,400 buildings, unchanged, plus \$2,370 CU, undisputed); and for tax year 2006, the assessment should be abated to \$399,470 (\$228,000 land NICU and \$169,100 buildings, unchanged, plus \$2,370

CU, undisputed). The board further finds, however, that Parcel N-3-1 was not disproportionately assessed in these tax years (at \$120,230, \$120,230 and \$155,230, respectively).

If the taxes have been paid, the amount paid on the total assessment on the Property in excess of \$511,200 for tax year 2004, \$569,500 for tax year 2005 and \$554,700 for tax year 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

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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: 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: January 11, 2008

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Anne M. Stelmach, Clerk