

Ellen G. Moot

v.

Town of Tamworth

Docket No.: 21213-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 ad valorem assessment of \$742,600 [4.8 acres of land not in current use (“NICU”) \$517,400; buildings \$225,200] on Map 407/Lot 093, 89 Chocorua Lake Road. This “Property” also contains 60.2 acres of land in current use (“CU”) assessed at \$5,073, which the Taxpayer is not appealing, making the total assessment on the Property \$747,673. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was 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 assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer, representing herself and with the help of her son (Alexander W. Moot), argued the ad valorem assessment was excessive because:

- (1) the Property consists of one undivided lot and has been in her family for many years;
- (2) most of the land, including most of the waterfront (60.2 acres -- about 93%) is in CU;
- (3) there is a “main house” and a “cabin” situated on the remaining land NICU (4.8 acres), which the Town improperly valued as two, waterfront 1-acre primary lots with values, after abatement, of \$270,100 and \$243,100, respectively (with 2.8 excess acres valued at \$4,200, not in dispute);
- (4) in actuality, a conservation easement (an 8-acre house lot minimum size restriction) and topography (distance to the water and quality of the shoreline in front of the cabin) makes it unreasonable to assess the Property as having two “lakefront” lots and the cabin, for assessment purposes, is better treated as having “lake access”;
- (5) the Property is on what is known as “little” Chocorua Lake and most of its frontage is in CU, as shown on the map in Taxpayer Exhibit No. 2, with a smaller area of waterfront NICU;
- (6) the Property has access to the “big” lake by land across a public road and by water (from “little” Chocorua Lake) under a low bridge;
- (7) the Town incorrectly applied a \$300,100 1-acre land value for lakefront properties on “big” Chocorua Lake, rather than lower values applied to other bodies of water in the Town and to non-waterfront lots having lake access; and
- (8) based on the sales comparisons to lake access and other parcels and the calculations presented in Taxpayer Exhibit No. 1, the land assessment associated with the main house should be further abated from \$270,100 (rounded) to \$119,340 and the land assessment associated with the cabin should also be further abated from \$243,100 to \$68,000.

The Town, represented by its assessor, Philip Bodwell of Commerford, Nieder, Perkins LLC, argued the ad valorem assessment on the Property, as abated at the municipal level, was proper because:

- (1) the Town performed a revaluation in tax year 2004 and determined, based on waterfront sales on Moore's Pond with some adjustment (since there have been no Chocorua Lake sales for quite some time), the base value for a 1-acre lot with water frontage should be \$300,100;
- (2) the market values lots on Chocorua Lake more highly than Moore's Pond or the other locations in the Taxpayer's comparables and the Town therefore applied an appropriate premium (50%) in estimating this base land value;
- (3) because of the large amount of CU land owned by the Taxpayer, the 8-acre minimum lot restriction is not an obstacle to developing a second waterfront lot on the Property;
- (4) the Town applied a 10% adjustment to the house lot and an additional 10% adjustment to the second lot that could be developed around the cabin and gave the Property a substantial abatement (reducing the total assessment from \$908,281 to \$747,673); and
- (5) no further abatement is warranted.

At the hearing, the parties stipulated the level of assessment in the Town was 101.9% for tax year 2004, as reflected by the median ratio computed by the department of revenue administration.¹

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$639,573. This consists of 4.8-acres of land NICU \$409,300 (\$405,100, rounded, plus \$4,200, unchanged, for

¹ Mr. Moot acknowledged the lower "equalization ratio" (88.4%) used in Taxpayer Exhibit No. 1, prepared prior to the hearing, was not correct.

excess land), buildings \$225,200 and land in CU \$5,073). The appeal is therefore granted for the reasons discussed below.

The Property as a whole contains 65 acres. Neither party questioned the assessment on the buildings nor did the Taxpayer appeal the CU assessment. Thus, the only question concerns proportional assessment of the land NICU, which contains two dwellings -- the main house, unheated and used as a camp in the summer, and the "cabin," separated from the main house, partially heated and used in the winter as well as the summer. (Included is this 4.8 acres of land NICU is 2.8 acres of excess land NICU shown on the Town's assessment-record card and assessed at \$4,200; the Taxpayer did not present any evidence to dispute this nominal assessment.)

The board took a view on July 12, 2007 to gain a better understanding of the parties' disagreement concerning the assessment on the 4.8 acres of land NICU, which is the focus of this appeal. The board saw the driveway and walked along the footpaths used to access the main house, the cabin and the waterfront.

The Town noted the Property has over 1,700 feet of frontage on "little" Chocorua Lake, but most of the waterfront is in current use. The "little" lake is secluded and somewhat separated from the "big" lake, but is connected by water access under a low bridge used for a public road. The board's view and the map included as part of Taxpayer Exhibit No. 2 helped clarify these facts.

When the Town performed a revaluation in 2004, using its CAMA (Computed Assisted Mass Appraisal) system, it assessed the Property as if it had two 1-acre waterfront lots in the land NICU, as shown on the assessment-record card. Because no arm's length sales have occurred on either part of Chocorua Lake for the past 20 years, the Town developed the \$300,100 base value

for waterfront lots by using several market sales of property on other bodies of water in the Town and applying a 50% premium to the indicated value. See Municipality Exhibit No. A at p. 2.

The board finds the Taxpayer failed to prove the Town erred by putting a 50% “premium” on land on Chocorua Lake when compared to land on Moore’s Pond. This premium appears to be reasonable given the relative desirability of Chocorua Lake and certain specific factors which the board has noted (no power boats, relatively undeveloped shore line, location, views, and the history and relative prominence of Mount Chocorua and Chocorua Lake).

The Taxpayer and her son disagreed with the Town’s methodology for valuing the land. They questioned the base value and also questioned whether it was proper to view the Property as having two developable lots because most of the land (60.2 acres) is in current use, there is an eight acre minimum lot size restriction in effect due to a conservation easement, and the assessment, even if a second developable lot could be created on the Property, is too high. See Taxpayer Exhibit No. 1, pp. 2-3 and 16.

While the board does not necessarily agree with the Town’s methodology to the extent it assumes the Property has two developable lots for assessment purposes, the relevant question, whatever the methodology employed by the assessors, is the market value of the 4.8 acres of land NICU. See, generally, Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003) (notwithstanding questions regarding assessment methodology, a taxpayer seeking an abatement must establish the “property is assessed at a higher percentage of fair market value than the percentage at which property is generally assessed in the town”), citing Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985) and other authorities. See also RSA 75:1 (selectmen have

obligation to base assessments on market value, unless the land is in CU or other statutory exceptions apply).

For example, the Town, like some other municipalities, could have developed a proportional value for the land NICU using one primary site value (rather than the two shown on the assessment-record card) and then adjusting for the presence of value-enhancing factors (and adding the value of any excess acres). In this appeal, the board finds there are value enhancing factors which need to be included in a proportional assessment. These factors include the fact there are two dwellings on the land NICU, each having its own septic and water systems, the physical distance of the dwellings from each other, which provides for additional buffering and privacy, and the fact both dwellings have reasonable shared access to the waterfront land that is NICU. In addition, and although disputed by the parties, the board finds, on balance, a conservation easement, such as the 8-acre minimum lot size restriction established by the Chocorua Lake Conservation Foundation, may have a positive effect on the market value of affected land NICU that has already been developed with two dwellings.

Applying such an approach for the 4.8-acres of land NICU, the board finds the Town's base rate for a developed lot (\$300,100) is reasonable, as is its negative 10% adjustment for location on "little" Chocorua Lake. The board then applied a 50% adjustment to the computed \$270,090 to arrive at a proportional assessment for the land NICU with some excess acreage (\$405,100 (rounded) plus \$4,200 = \$409,300). The board finds this is the most reasonable value for the land NICU, taking all the relevant factors into account.

While this is lower than the Town's assessment, it is higher than the assessment proposed by the Taxpayer. The Taxpayer presented some market value evidence (of sales on other lakes and in two neighboring towns, see Taxpayer Exhibit No. 1, p. 8), but no appraisal or other

professional opinion of the value of the Property. The board has reviewed the detailed analysis presented by the Taxpayer and her son and is unable to find that an indicated market value as low as \$188,000 for the 4.8-acres of land NICU can be justified. (This is the Taxpayer's proposed land assessments of \$119,340 and \$68,000 for the main house and cabin land presented on page 16 of Taxpayer Exhibit No. 1, plus \$4,200 for the excess acres, divided by the level of assessment, rounded).

Instead, as noted above, the board finds the assessment on the land NICU should be abated to \$409,300. Since the Taxpayer did not challenge the building assessment of \$225,200 or the CU assessment of \$5,073, the total assessment on the Property is abated to \$639,573.

If the taxes have been paid, the amount paid on the value in excess of \$639,573 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Town undergoes a general reassessment or in good faith reappraises the Property pursuant to RSA 75:8, the Town 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.

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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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Ellen G. Moot, 44 Coolidge Hill Rd., Cambridge, MA 02138, Taxpayer; and Chairman, Board of Selectmen, Town of Tamworth, PO Box 359, Tamworth, NH 03886.

Date: September 14, 2007

Anne M. Stelmach, Clerk