

Joseph S. Haas

v.

Town of Boscawen

Docket No.: 21230-04PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2004 assessment of \$14,400 on Map 49, Lot 36, a 1.5-acre undeveloped lot (the “Property”). (The Taxpayer owned another parcel, Map 49, Lot 33, but neither party questioned the assessment on that lot.) For the reasons stated below, the appeal for abatement on the Property (Lot 36) 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 argued the assessment was excessive because:

(1) the Property was purchased on November 17, 2003 for \$3,000 and the deed (Taxpayer Exhibit No. 1) indicates: “This is a non-buildable lot.”;

- (2) the seller listed the Property with a broker (see Taxpayer Exhibit No. 2) with an asking price of \$4,000 and it was marketed publicly for almost one year before the Taxpayer purchased it;
- (3) the Property is on a private, unpaved road (Tote Road) of “mud and dirt,” with some gravel placed on it by the Taxpayer and his neighbors who use it as their only means of access;
- (4) the Property is less desirable than other properties mentioned by the Town because, in comparison to them, it does not abut state forest land or land owned and protected by a conservation group (the Society for the Protection of New Hampshire Forests) and it does not have water access (to a brook for swimming);
- (5) the Property has no electricity; and
- (6) the Property is entitled to an abatement.

The Town argued the assessment was proper because:

- (1) a revaluation was performed in the Town in tax year 2003;
- (2) substantial adjustments were made for the undeveloped and unbuildable condition of the Property, the condition of the road and the lack of electricity, as reflected on the “70” and “35” adjustment and condition factors shown on the assessment-record card;
- (3) two comparable sales (of Lots 32 and 39 in November, 2002 and May, 2003, respectively) support the assessed value of the land;
- (4) the Town considers the 2003 sale of the Property to the Taxpayer to be “unqualified,” making the sale price not relevant;
- (5) although less than the Town’s minimum of 2.75 acres, the Property is potentially buildable as a pre-existing, non-conforming lot, provided any future building meets the Town’s setback and other requirements; and
- (6) the appeal should be denied.

The parties agreed the level of assessment in the Town was 86.8% for tax year 2003.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$4,340 (estimated market value of \$5,000 times the 86.8% level of assessment).

Proportional assessments are based on market value adjusted by the level of assessment in the Town. See, e.g., Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). The parties substantially disagree on the market value of the Property. By arguing the assessment was proportional, the Town implies the market value of the Property was at least \$16,600 (rounded; \$14,400 assessment divided by the 86.8% level of assessment) as of the assessment date. The board disagrees and finds the Taxpayer satisfied his burden of proof that the market value was much lower.

The Taxpayer emphasizes he purchased the Property for \$3,000 in November, 2003, just five months before the assessment date, in an arms-length transaction using a real estate broker, and after it had been on the market (listed with the seller's broker) for almost one year. This price is consistent with the \$5,000 purchase price he paid six months earlier for Lot 33, situated diagonally across Tote Road which contains a cabin and is somewhat larger in size (2.95 acres compared to 1.5 acres for the Property).¹ While the Taxpayer candidly acknowledged he "got a good deal," he estimated the market value of the Property to be \$5,000 as of the April 1, 2004 assessment date. The board finds this estimate is credible and supported by the evidence considered as a whole.

¹ The board disagrees with the Town's argument that the purchase prices for these lots should be ignored (as "unqualified"). Regarding another Town argument, the fact the Taxpayer declined to appeal the assessment on Lot 33 is not probative or a concession by him that a higher land value is appropriate for the Property, since parties may choose not to file appeals on other property for reasons other than their agreement with the Town's assessments.

The Town acknowledged it had no comparable undeveloped land sales to support the assessment. The two 2003 land sales it did rely on (Lot 32 and Lot 39) had higher selling prices, but involved improved, rather than undeveloped, parcels: Lot 32 sold for \$26,900, improved with a cabin; and Lot 39 sold for \$45,000, improved with a 2-story year-round home (renovated from a seasonal camp) with electricity, well and septic. The Taxpayer further indicated Lot 32 was partially cleared and “had a view” of the hills and woods, making it more desirable and valuable than the Property. The Town only presented one side of the assessment-record cards for Lots 32 and 39 (see Municipality Exhibit C, containing “6/29/06” print dates) which show high building values (\$18,600 and \$58,900) relative to the respective land assessments and no indication that either lot (unlike the Property) was considered “unbuildable” by the Town.

Notwithstanding this notation on the assessment-record card, the Town’s assessor questioned whether the Property is actually “unbuildable,” indicating construction activity had occurred on nearby properties where certain owners proceeded with development without building permits or other Town approvals. The Town also mentioned several larger undeveloped parcels, Lot 40 (5.2 acres) and Lot 41 (5.38 acres), which sold in July, 2005 for \$30,000 and \$50,000, to support the assessment.

The board has considered the evidence presented carefully. It may be that higher assessments on the Property are supportable in future years based on more recent market activity, increasing demand and evolving perceptions regarding apparent laxity in the Town’s enforcement of building and other development restrictions. The question before the board, however, is the assessment for tax year 2004 based upon relevant conditions and reasonable expectations at that time. The board finds the Taxpayer’s evidence of the purchase price and his testimony regarding land (“unbuildable”) and road conditions to be credible and persuasive on

the issue of the Property's market value as of the April 1, 2004 assessment date. Even his Warranty Deed for the Property (Taxpayer Exhibit No. 1) states: "This is a non-buildable lot."

While the Town explained it did make substantial adjustments (70% and 35%) for such conditions, these adjustments would be sufficient only if the board were to further conclude the base rate applied (\$58,891) was reasonable. Moreover, as shown on Municipality Exhibit C, even Lots 32 and 39 (discussed above) received somewhat similar adjustments (70% and 35%, and 80% and 50%, respectively) even though, in contrast to the Property, they were not designated as "unbuildable" by the Town. For all of these reasons, the board finds the Property was overassessed and is entitled to an abatement for tax year 2004.

If the taxes have been paid, the amount paid on the value in excess of \$4,340 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. 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

Michele E. LeBrun, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Joseph S. Haas, PO Box 3842, Concord, NH 03302, Taxpayer; Gary J. Roberge, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, representative for the Municipality; Edward Tinker, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, representative for the Municipality; and Town of Boscawen, Chairman, Board of Selectmen, 116 North Main Street, Boscawen, NH 03303.

Date: August 1, 2006

Anne M. Stelmach, Clerk