

**Cynthia R. Phillips**

**v.**

**City of Concord**

**Docket No.: 21231-04PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2004 assessment of \$8,800 (land only) on Map 104/2/25, a 0.40-acre lot at 50 District 5 Road (the “Property”). The Taxpayer also owns, but is not appealing, Map 99/2/36, a single family home on a 2.40-acre lot at 49 District 5 Road with an assessed value of \$187,100 (“Non-appealed Parcel”). For the reasons stated below, the appeal for abatement is denied.

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. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property is a legal non-conforming parcel but is unbuildable due to its small size, its extremely limited building envelope due to zoning setbacks and its sloping topography which would cause any driveway to be unsafe;
- (2) an appraisal performed by Louis C. Manias (“Manias Appraisal”) estimated the Property’s market value at \$5,000 as supplemental land; and
- (3) it is improper for the City to require the Taxpayer to prove the Property is unbuildable and have it deemed “unbuildable” by going through the building permit application process.

The City argued the assessment was proper because:

- (1) a number of transactions in Concord and nearby municipalities indicate a range of value for such legal non-conforming lots of \$3,500 to \$23,000;
- (2) the Manias Appraisal comparables appear selected to result in a low value and were not adjusted adequately for the fact the Property is on a City maintained road; and
- (3) the Taxpayer failed to provide any market evidence of the Taxpayer’s entire estate inclusive of the Non-appealed Parcel, Map 99/2/36.

### **Board’s Rulings**

Based on the evidence, the board finds the Taxpayer failed to establish the Taxpayer’s entire estate (the Property and the Non-appealed Parcel) is disproportionately assessed.

The Taxpayer’s attorney would have the board believe the primary issue in this appeal hinges upon the legal argument summarized in his memorandum of law that “there is no absolute requirement by statute, case law, appraisal manuals or rulings of this Board, that a taxpayer must seek a permit or variance and be denied in order to be entitled to a tax abatement for an unbuildable lot.” If the Property was the only taxable real estate within the City of Concord

owned by the Taxpayer, such argument may have merit. However, because the Taxpayer's taxable estate is comprised of the Property and the Non-Appealed Property, this appeal hinges on the long established precedent that a taxpayer who owns multiple parcels, but only appeals one, can only be granted an abatement if the entire estate within a taxing jurisdiction is shown to be disproportionately assessed. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985):

When a taxpayer challenges an assessment on a given parcel of land, the board must consider assessments on any other of the taxpayer's properties, for a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is unfavorably disproportionate to the assessment of property generally in the town. Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 449, 102 A.2d 512, 516 (1954). 'Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.' Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200, 205, 46 A. 470, 473 (1899) (citations omitted).

See also Bemis &c. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954):

It must result in placing upon plaintiff more than his share of the common tax burden. Amoskeag Mfg. Co. v. City of Manchester, [70 N.H. 200 (1899)]; Rollins v. Dover, [93 N.H. 448 (1945)]. This inequity exists when the assessment placed on plaintiff's property as a whole is disproportionately higher in relation to its true value than is the case as to other property in general in the taxing district. Brock v. Town of Farmington, 98 N.H. 275, 279 [(1853)]. To determine if such is the case *all of plaintiff's taxable estate in the city and its total tax must be considered* regardless of any agreement as to any part thereof which might have been arrived at between the parties. That is the only way of ascertaining if plaintiff is carrying more than its share of the common tax burden for the year 1951. Amoskeag Mfg. Co. v. City of Manchester, supra, 204; Rollins v. Dover, supra. Even if one class of plaintiff's property has been assessed at a higher proportion of its true value than that of other taxpayers it is not entitled to an abatement unless its total tax is greater than its share of the common burden. Edes v. Boardman, 58 N.H. 580, 586 [(1879)]; Eyers Woolen Co. v. Gilsum, 84 N.H. 1, 4 [(1929)]. In one sense, in this proceeding plaintiff is one party and all the remaining taxpayers the other party. The question is in what way between these two parties the constitutional rule of equality of burden shall be carried into effect. Amoskeag Mfg. Co. v. City of Manchester, supra, 206. (Italics added).

This concept is based on Part I, Article 12 of the New Hampshire Constitution which requires each person who is provided the protection of government must contribute their share in the expense of such protection. Further, to ensure that each person's share is proportional and

reasonable (Pt. II, Art. 5) and relative to market value (RSA 75:1), a taxpayer's entire estate, not just a select portion of it, must be considered in determining whether those constitutional requirements have been met.

In this appeal, the Taxpayer's entire estate is comprised of the Property, a 0.40-acre unimproved parcel on the north side of District 5 Road and a 2.40-acre parcel with a dwelling (Non-appealed Parcel) on the south side of District 5 Road. The Taxpayer's entire estate is assessed at \$195,900 (\$8,800 for the Property and \$187,100 for the Non-appealed Parcel). The parties stipulated the level of assessment for tax year 2004 was reasonably represented by the department of revenue administration's median ratio of 93.9%. Applying the 93.9% ratio to the total assessment indicates a market value of \$208,626 for the Taxpayer's entire estate. The Taxpayer presented no evidence as to the market value of its entire estate but rather only focused on the undeveloped parcel which comprises less than 5% of the entire assessment. Further, the difference between the assessed value for the Property and the assessed value argued by the Taxpayer is less than 2% of the value of the entire taxable estate. Even if the board were to agree with the Manias Appraisal conclusion, which it does not, such nominal difference compared to the Taxpayer's entire estate does not carry the Taxpayer's burden of proving disproportionality.

Further, the board agrees with the City that the Manias Appraisal is unreliable even if one were to consider the Property in isolation of the entire estate because it did not consider all possible comparable sales in Concord and the surrounding municipalities such as those presented by the City. While the board agrees that not all the sales are comparable, those chosen to be utilized in the Manias Appraisal are at the low end of the range and in the case of comparable

sales 2 and 3 did not receive any adjustments for their difference for lack of access and road frontage.

In short, because the Taxpayer failed to present any evidence as to the market value of the Taxpayer's entire estate within the City, the Taxpayer failed to carry its burden and no abatement is warranted.

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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Douglas S. Ricard, Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Roger B. Phillips, Esq., Phillips Law Office, PLLC, 104 Pleasant Street, Concord, NH 03301, counsel for the Taxpayer; and Chairman, Board of Assessors, City of Concord, 41 Green Street, Concord, NH 03301.

Date: February 19, 2008

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Anne M. Stelmach, Clerk