

Mary M. Thompson Living Trust

v.

Town of Washington

Docket No.: 21912-05PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2005 (land only) assessments on three lots on Harrison Road: \$61,100 on Map 14/Lot 13; \$61,000 on Map 14/Lot 14; and \$61,000 on Map 14/Lot 16 (collectively, the “Property”). The Taxpayer also owns, but is not appealing, Map 14/Lot 015 (“Lot 15”), a single family home on a 1.12-acre lot assessed at \$291,800. The parties agreed Lot 15, the non-appealed property, was proportionally assessed. For the reasons stated below, the appeals for abatement are granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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, represented by the Trustee, Robert W. Thompson, argued the assessments on the three lots were excessive because:

- (1) the lots are on the Ashuelot River and are not buildable for the reasons explained in detail in the appeal document and Taxpayer Exhibit No. 1;
- (2) in several inventories and one survey described in this same exhibit, the lots were determined to be wetlands and are in a flood plain and are so depicted in the maps presented;
- (3) a licensed New Hampshire wetlands scientist concluded Lot 13 is 100% wetlands, Lot 14 is 94% wetlands and Lot 16 is 85% wetlands;
- (4) in 1988, DES (the department of environmental services) denied a “Dredge and Fill Application” for Lot 13 because the lot was determined to be “unbuildable”;
- (5) the assessments should be abated in light of the market evidence presented for similar lots by applying lower factors to the primary land and waterfront than shown on the Town’s assessment-record card to arrive at a proportional assessment; and
- (6) the resulting assessments, based on the spreadsheet presented in Taxpayer Exhibit No. 1, should be no more than \$24,500 for Lot 13 and \$24,400 each for Lot 14 and Lot 16.

The Town argued the assessments were proper because:

- (1) the Town performed a full revaluation in 2005 and discovered this area of the Town had been significantly underassessed in prior years;
- (2) current use (“CU”) property in the Town is generally rear land without access and comparing the condition factor applied to certain ad valorem assessments for rear land in CU land to the

Property, which is on the waterfront and which does not qualify for CU, is not appropriate;

(3) the three lots comprising the Property have value because of water frontage and road access and while they have wet soils, the Town took this into account by assigning a condition factor of “25”;

(4) Lot 18, for example, situated near the Property, sold for \$151,800 in July, 2007 and had an assessed value of \$130,700 (see Municipality Exhibit Nos. A and B);

(5) Lot 11, referred to by the Taxpayer at the hearing, was not a “qualified sale” and was therefore not used by the Town; and

(6) the assessments on the three lots under appeal are reasonable and proportional.

Board’s Rulings

Based on the evidence, the board finds the proper total assessment on the Property to be \$88,300.

Following the hearing, the board directed its review appraisers to research and submit a fact-finding report. On May 28, 2008, Ms. Therese M. Walker, one of the board’s review appraisers, filed her report (the “Report”). The board’s authority to utilize its review appraisers to aid its determination of the proportionality of assessments is clear. See RSA 71-B:14 and Appeal of Sokolow, 137 N.H. 642, 643-44 (1993). The parties were copied with the Report and given 15 days to submit written comments.

The Town filed comments on the Report in a May 29, 2008 letter signed by the three members of its board of assessors. Ms. Chris Murdough of Avitar Associates of New England, Inc. (“Avitar”), the Town’s representative at the hearing, did not submit any comments of her own. (The Taxpayer submitted two letters dated June 21, 2008, which were beyond the 15 day

prescribed time period and responded to the Town's comments; these two letters were returned to the Taxpayer by the Clerk.

As noted in the Report (at pp. 1-2), the three lots in this appeal have many similarities. All are "roughly rectangular in shape," between 1 and 2 acres in size, with road frontage (125 feet each) and water frontage ranging from 132 feet to 235 feet on the Ashuelot River.

The key disputes between the parties center on how "wet" the vacant lots are and how the question of whether or not each is "buildable" affects market value. On balance, the board finds the Taxpayer satisfied its burden of proof on these issues. Among other things, the Taxpayer noted there was very little upland and a lot of wetland on each of the lots and this was confirmed by a certified wetlands scientist who concluded Lot 13 was 100% wet, Lot 14 was 94% wet and Lot 16 was 81% wet. (See Taxpayer's appeal document (Section 2 of Attachment F) and Report, p. 2.)

Although there is obvious and continuing disagreement between the parties regarding these lots, the board finds the physical and market evidence supports the conclusion the lots contained significant wetlands and were overassessed. In this regard, and in response to the Town's comments, detecting the presence of wetlands is not based simply on the presence or absence of standing water on the lots at any given time, perhaps due to unusually heavy rains or floods in recent years, but rather on accepted indicia, such as the type of soils and vegetation, which qualified experts, like the certified wetland scientist employed by the Taxpayer, consider before arriving at their independent conclusions.

The Town's comments to the Report (by the three member board of assessors) indicate a belief the lots were not so severely restricted in their potential for development by wetlands and

that other, unspecified lots on or near the water are similarly affected. There was no conclusive evidence presented at the hearing, however, to sustain this proposition; while the proposition may or may not be true, the board's task in arriving at a proportional assessment is to determine whether adverse factors like wetlands impacts market values based on the evidence presented at the hearing, rather than subsequent attempts at testimony or further speculation by either party after the hearing is closed.

The market evidence presented in this appeal included the sales and listings of several other lots in the vicinity of the Property which are summarized on page 3 of the Report. Map 14, Lot 11, a 1.43 acre parcel, sold for \$12,000 in May, 2006 after being offered for a higher amount (\$19,000) with a market listing (through "NHEREN," the Northern New England Real Estate Network) stating it was a "lot classified as wetlands perfect for recreational uses . . . does not appear to be buildable." (The Report notes Lot 11, contrary to the testimony at the hearing, was not taken by the Town for back taxes (but the adjacent Lot 12 may have been). The board therefore finds no reason why Lot 11 should not be considered a bona fide, "qualified" sale.) Map 14, Lot 17, a 1.15 acre rectangular parcel with 125± feet of frontage, was reduced in price to \$19,000 in June, 2006, after being listed at \$24,900 with no interest at that higher offer price. Map 14, Lot 18 sold in July, 2007 for \$151,500, with some wetlands but it was believed to be a buildable lot, with plans to construct a two-bedroom house with onsite septic on it. Another lot (Map 10, Lot 33), consisting of 1.30± acres and 130± of water frontage sold 27 months after the assessment date (in June, 2007) for \$170,000, but this lot had more upland (90%±) and received approvals to build a four bedroom house with a two car garage. In brief, this market evidence

supports the conclusion one would expect: namely, that buildable, waterfront lots in the Town sell for substantially more than lots that are either unbuildable or likely to be unbuildable in the eyes of prospective purchasers in light of the risks and uncertainties of applying for and obtaining permits and/or variances for such development.

Consequently, the board finds an abatement on each lot is appropriate, whether or not the Taxpayer, subsequent to the assessment date, chose or chooses to merge any of them. The board has considered each lot separately for this reason and also because the Taxpayer's other property (Lot 15) was not appealed and the Town agreed it was proportionately assessed.

The board has reviewed the assessment-record card for each lot, which show the adjustments made by the Town, and finds, using its judgment and experience,¹ the assessments should be abated to \$29,500 for Lot 13, \$29,400 for Lot 14 and \$29,400 for Lot 16, for a total assessment of \$88,300 for the Property. These assessments can be arrived at arithmetically by applying a condition factor of "10" to the primary acreage and a condition factor of "25" for the waterfront, instead of the higher factors shown on the Town's assessment-record card or the lower factors proposed by the Taxpayer in Taxpayer Exhibit No. 1. (The Town's level of assessment in tax year 2005 was close to 100%, so these abated lot assessments are intended to approximate market values.)

The board finds these abatements, while not exact, are appropriate because the evidence indicated these lots were somewhat better than Lot 11 and Lot 17 (described above), which sold for lower prices. The Town correctly notes the lots under appeal have driveways and road access

¹ The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 71-B:1; RSA 541-A:33 VI; and Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

and are on the Ashuelot River waterfront. The board finds, however, the Taxpayer raised legitimate questions regarding whether they were “buildable” as of the assessment date, April 1, 2005 rather than just vacant land that is not developable without additional state and local permits/variances that may or may not be granted in the future.

In closing, it should not be necessary for the Taxpayer to disprove the Town’s contentions that the lots might be potentially buildable at some point, based on speculations regarding future permitting practices and/or future improvements in the design of septic systems. To require the Taxpayer to make a more extensive and definitive showing than reflected by the evidence submitted in this appeal in order to obtain abatements would, in the board’s view, be unreasonable.

For all of these reasons, the appeal is granted and the assessments for each lot comprising the Property are abated to the amounts stated above.

If the taxes have been paid, the amount paid on the value of the Property in excess of \$88,300 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(g). 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

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: Robert W. Thompson, 82 Harrison Road, PO Box 284, Washington, NH, Trustee for the Taxpayer; Chris Murdough and Loren J. Martin, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, contracted assessing firm for the Town; and Chairman, Board of Selectmen, Town of Washington, 7 Halfmoon Pond Road, Washington, NH 03280.

Date: 7/16/08

Anne M. Stelmach, Clerk