

Alden H. & Earline R. Pillsbury

v.

Town of Grantham

Docket No.: 22463-05PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2005 assessment of \$270,460 (land not in current use (“NICU”) \$118,700; buildings \$137,700; land in current use (“CU”) \$14,060) on Map 226/Lot 014, consisting of 62 acres on Pillsbury Road (the “Property”), with one acre NICU and 61 acres in CU. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have 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 Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) they hired an appraiser (Karen Ryan of K.D. Ryan Appraisal Services, Inc.) who advised them the assessment of the land NICU should be \$71,400;
- (2) the Town increased the land assessment by 360% in tax year 2005, compared to an average of about 100% for other properties;
- (3) the Town uses the driveway on the Property for traffic turn-around operations and reducing the land value by a further 10% for this situation would be “fair”;
- (4) there is no dispute regarding the building value or the CU value; and
- (5) the total assessment should be abated by reducing the assessment of the land NICU (from \$118,700 to \$63,900).

The Town argued the assessment, as adjusted below, results in a proportionate assessment because:

- (1) a revaluation was performed in tax year 2005;
- (2) what Karen Ryan prepared for the Taxpayers is not an “appraisal” but simply a comparison of the assessment of the Property to several others;
- (3) in discussions with Ms. Ryan last year, the Town’s representative, John M. Hatfield of Comerford, Nieder, Perkins, LLC, indicated the Town would lower the assessment of the land NICU to \$89,300 by reducing the condition factor from 1.5 to 1.25, but the Taxpayers desire an even greater reduction;
- (4) the Taxpayers allow the Town to use the driveway and this permissive use does not reduce the value of the Property for assessment purposes;

(5) the comparable properties submitted by the Town included in Municipality Exhibit No. A support the Town's proposed reduction of the assessment of the land NICU to \$89,300, but no more; and

(6) the total assessment on the Property should be reduced, but only because of this adjustment to the land NICU and only to this extent.

The parties agreed the level of assessment was 100% in tax year 2005.

Board's Rulings

Based on the evidence, the board finds the proper total assessment to be \$241,060 (land NICU \$89,300; buildings \$137,700; land in CU \$14,060) and an abatement is granted to this amount.

The parties do not dispute the building assessment or the CU assessment. Nonetheless and as a preliminary matter, the board notes the Taxpayers admit a barn is located on part of the land designated as CU, but they claim this treatment is "grandfathered" since it has remained unchanged since the land was first placed in CU many years ago. There is, however, no basis in the law for continuing to keep land not eligible for CU in that category, regardless of when or how the classification error may have originated. See RSA 79-A:5 (Assessment of Open Space Land); and Cub 301.10 ("Unimproved land" means any land, left in its natural state, which is devoid of structures or other improvements.") The parties should therefore take the steps necessary to ascertain how much of the land remains undisturbed and qualified for CU and the Town should then make appropriate changes prospectively to the total assessment of the Property, without assessing a land use change tax ("LUCT") penalty.

Turning to the assessment of the land NICU for tax year 2005, the board disagrees the Ryan "appraisal," adjusted by a further 10% because of the Town's use of part of the driveway

with the Taxpayers' permission, supports an abatement to \$63,900. First, what Ms. Ryan submitted (Taxpayer Exhibit No. 2, her letter dated August 2, 2007) is not an appraisal or even a bona fide expert opinion of value. Her letter is simply an expression of a personal view regarding what the assessment should be and is not based on any market evidence, but simply on comparisons to three other assessments in the Town. Ms. Ryan did not attend the hearing to testify and be subject to cross-examination from the Town and/or questions from the board. In her letter, Ms. Ryan describes the use of the driveway "by town plows and sanders" and the resulting sand and salt left in the spring, but the Town indicates this occurs with the Taxpayers' permission and does not detract from the value of the Property. The board agrees with the Town that no weight should be given to Ms. Ryan's letter as an estimate of the value of the land NICU and no reduction is indicated for the Town's seasonal plowing and sanding activity.

The Taxpayers argued their assessment increased at a greater percentage than other properties in the Town. The board finds this fact, even if true, does not prove the Property is disproportionally assessed. See Appeal of Town of Sunapee, 126 N.H. 214 (1985). A greater percentage increase in an assessment following a municipal revaluation is not a basis for an abatement since unequal percentage increases are inevitable following such reassessments. RSA 75:8 requires municipalities to examine all real estate in the municipality on an annual basis and reappraise such real estate as has changed in value. When a Town performs a revaluation, it is intended to remedy past inequities and, thus, the new assessments will vary between properties, both in absolute numbers and in percentages.

Upon review, the Town indicated its agreement that the assessment of the land NICU should be abated to \$89,300 by reducing the "condition" factor from 1.5 to 1.25. This change is already reflected on the Town's assessment-record card in Taxpayer Exhibit No. 2 (showing a

print date of “7/30/2007”). The \$89,300 value for the land NICU is also supported by the comparable properties shown in Municipality Exhibit No. A, a number of which have ponds and a 1.25 condition factor associated with them. In summary, the board finds the resulting value of \$89,300 for the land NICU is supported. The board finds no further adjustments are warranted because the Taxpayers submitted no evidence of the market value of the Property. (See RSA 75:1). To prove disproportionality, the Taxpayers needed to present evidence that the assessment was disproportionate to its market value (adjusted by the level of assessment). See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of Great Lakes Container Corp., 126 N.H. 167, 169 (1985); and Appeal of Town of Sunapee, 126 N.H. 214, 217-218 (1985).

If the taxes have been paid, the amount paid on the value in excess of \$241,060 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Unless 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: Alden and Earline H. Pillsbury, P.O. Box 77, Grantham, NH 03753, Taxpayers; Chairman, Board of Selectmen, Town of Grantham, 300 Rt. 10 South, Grantham, NH 03753-3618; and Commerford Nieder Perkins, LLC, 556 Pembroke Street Suite #1, Pembroke, NH 03275, Representative for the Municipality.

Date: April 14, 2008

Anne M. Stelmach, Clerk