Androscoggin Valley Country Club

v.

Town of Gorham

Docket Nos.: 22744-06PT/23419-07PT

DECISION

The "Taxpayer" owns an 18-hole golf course (the "Golf Course"), located partially in Gorham ("Gorham") and partially in Shelburne ("Shelburne"), and filed separate tax appeals against each municipality for tax years 2006 and 2007. The portion of the Golf Course in Gorham, Map U1, Lot 1 ("Lot 1"), consists of 33.7 acres. Lot 1 had a tax year 2006 assessment of $289,700 (land $140,500; building $149,200) and a tax year 2007 assessment of $343,300 (land $250,100; building $93,200). The appeals for abatement on Lot 1 in Gorham are granted.

The portion of the Golf Course in Shelburne, Map 2, Lot 3 ("Lot 3"), consists of 106.2 acres, according to the tax year 2007 assessment-record card. In separate Docket Nos. 22751-06PT and 23420-07PT, the Taxpayer appealed the abated assessments in tax years 2006 and 2007 of $846,800 on Lot 3. On April 8, 2009, the board held a consolidated hearing on both sets of appeals (all four case dockets) and the board has taken notice of all of the valuation evidence presented in deciding the Lot 1 and Lot 3 appeals in each municipality (using one set of exhibit markings). At the request of Gorham's attorney, however, the board is issuing separate decisions for the lot located in each municipality rather than a consolidated decision.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessments were 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 Lot 1 assessment was higher than the general level of assessment in each tax year under appeal. Id. The Taxpayer carried this burden.

The Taxpayer argued the Gorham assessments on Lot 1 were excessive because:

(1) the Golf Course is situated between Route 2 and the Androscoggin River (near where it meets a tributary, the Peabody River) and is subject to annual flooding problems because of this location;

(2) the land is in a flood plain and the highest and best use of the Golf Course is this long-standing use as an 18-hole golf course;

(3) the Golf Course is "recreational" in nature, not a "championship" golf course which would have a higher quality and market value;

(4) the market for recreational golf has been decreasing because of the increasing expense of golf equipment, the loss of jobs in the area and changing demographics, all of which has caused annual club memberships to decline from a peak of 525 members in 1996 to around 300 members for 2006 and 2007;

(5) the clubhouse, located in Gorham, is small (approximately 2,100 square feet) and only has a snack bar and other very basic facilities;

(6) due to flooding and river erosion of the topsoil, the Taxpayer had to abandon three existing holes and redesign the golf course in 2003, making the size of the entire course smaller by about 20 to 30 acres,

(7) an appraisal prepared by Charles F. Schubert, Jr. of Applied Economic Research (the "Schubert Appraisal," Taxpayer Exhibit No. 1 with correction pages) estimated the market value of the Golf Course as a whole at $530,000 as of April 1, 2006 and $560,000 as of April 1, 2007 using the cost and income approaches, with an emphasis on the latter approach;

(8) after deducting the $50,000 estimated value of personal property (the so-called "FFE"—furniture, fixtures and equipment), the Schubert Appraisal estimated the taxable value of the Golf Course to be $480,000 and $510,000, respectively, for these two tax years;

(9) after correcting for some computational and other errors noted at the hearing, Mr. Schubert concluded the taxable value of the Golf Course was $460,000 in tax year 2006 and $490,000 in tax year 2007;

(10) the Taxpayer was open to 'any allocation' of the total value of the Property between the two towns, including the 70% (Shelburne) and 30% (Gorham) allocation suggested by the Shelburne assessor at the hearing, but Gorham has refused to follow an allocation approach, contending instead that the value of Lot 3 in Gorham must be estimated on its own, without reference to the Golf Course as a whole; and

(11) Lot 1 is entitled to a substantial abatement in each tax year.

Gorham argued the assessments on Lot 1, except as specifically noted below, were proper, because:

(1) Gorham commissioned a summary appraisal by its assessor, George Sansoucy, P.E. (the "Sansoucy Appraisal", Municipality Exhibit C), which estimates the market value of Lot 1 to be $343,300 in each tax year;

(2) Lot 1 is in a residential zone and the Golf Course is a preexisting, nonconforming use of the land;

(3) Gorham did not use a percentage allocation because the Sansoucy Appraisal properly estimates the value of Lot 1 alone for highest and best use as a residential subdivision, rather than estimating the value of the Golf Course as a whole, including Lot 3 in Shelburne;

(4) the Sansoucy Appraisal is the most reasonable estimate of the value of Lot 1 and supports the proportionality of the assessments on Lot 1; and

(5) the Taxpayer failed to meet its burden of proof (except for an abatement in tax year 2006 to $196,367.60, resulting from applying the 57.2% level of assessment to a market value of $343,300; see Gorham's Request for Finding Nos. 12 and 13 below).

The parties agreed the levels of assessment in Gorham were 57.2% in 2006 and 100.6% in 2007, the median ratios computed by the department of revenue administration.

Board's Rulings

Based on the evidence, the board finds the proper assessments on Lot 1 to be $129,000 (rounded) in tax year 2006 and $226,000 (rounded) in tax year 2007, based on market value findings of $225,000 in each tax year (using a 30% allocation of the value of the Golf Course to Gorham, adjusted by the 57.2% and 100.6% levels of assessment noted above). The appeals are therefore granted for the reasons discussed below.

In making market value findings, the board considers and weighs all of the evidence, including, in these appeals, the respective appraisals submitted for the Taxpayer, Gorham and Shelburne, applying the board's "experience, technical competence and specialized knowledge" to this evidence. See RSA 71-B:1; and former RSA 541-A:18, V(b), now RSA 541-A:33, VI, quoted in Appeal of City of Nashua, 138 N.H. 261, 265 (1994) (the board has the ability, recognized in the statutes, to utilize its "experience, technical competence and specialized knowledge in evaluating the evidence before it"). Further, in making findings where there is conflicting evidence, the board must determine for itself the weight to be given each piece of evidence because "judgment is the touchstone." See, e.g., Appeal of Public Serv. Co. of N.H., 124 N.H. 479, 484 (1984), quoting from New England Power Co. v. Littleton, 114 N.H. 594, 599 (1974), and Paras v. Portsmouth, 115 N.H. 63, 68 (1975); see also Society Hill at Merrimack Condo. Assoc. v. Town of Merrimack, 139 N.H. 253, 256 (1994).

The board will first address the argument made by Gorham that the two lots which comprise the Golf Course should be valued separately based on the amount of land and improvements located in each

municipality (rather than on the basis of an allocation of the value of the Golf Course as a whole between the two municipalities). Gorham's position on this issue is not sustainable because there is no reasonable likelihood the Golf Course will cease being used for this purpose in the foreseeable future or that highest and best use considerations suggest the optimal uses to which the parcels should be put are segmented and diverse (residential in Gorham, downsized (less than 18-hole?) golf course in Shelburne).

The board finds it is more reasonable to value the Golf Course as a whole, given its unified and long-standing use as a recreational property and operation as a single economic unit. This is the approach taken by the experts for both the Taxpayer and Shelburne. These two parties further agreed to a 70%-Shelburne, 30%-Gorham allocation, which the board finds is reasonable, especially in light of Gorham's failure to propose a specific allocation percentage. As noted above, most of the acreage and 15 of the 18 golf holes are located in Shelburne, with the remaining three holes, the club house, most of the paving and the entrance from Route 2 located in Gorham. The board finds Lot 1 in Gorham is integral to the operation of the Golf Course rather than being excess land or land that could be developed, in a highest and best use analysis, separately for single family residential uses with considerable back land.

In estimating the value of Lot 1 as a separate parcel, Gorham's appraiser, Mr. Sansoucy, did not use either the sales or the income approaches but instead relied only on the cost approach, estimating the market value of the 33.7 acres of land in Gorham "as vacant" to be $250,100 and then adding an estimate of the depreciated cost of the improvements ($93,200). See Sansoucy Appraisal (Municipality Exhibit C), pp. 3, 19 and 22. The board finds there are several problems with this approach.

To begin with, it is somewhat inconsistent as an appraisal exercise to value Lot 1 as vacant, developable residential land and then add the depreciated value of the Golf Course improvements (club house building, garage, paving, etc.). If indeed an alternative (residential) highest and best use is indicated, the demolition cost of these specific improvements (rather than an estimate of their heavily

depreciated value) should be deducted from the estimated value of the land to be subdivided and developed as residential lots since the existing improvements would have no discernible utility in this scenario.

Further, the board does not agree with Mr. Sansoucy's use of single-family residential lots as valid sale comparables to derive a "first acre" value of the land at $33,500 and the next nine acres (because of Route 2 frontage) at $196,000. Id. at p. 22. (Mr. Sansoucy valued the remaining 23.7 acres as "backland" at $20,600. Id.) Given the flood plain and wetland issues associated with Lot 1,[1] the board finds it unlikely, and against the weight of the evidence, to assume someone would purchase it in an arm's-length transaction for $343,300 in order to develop ten singe-family residential lots simply because it is presently zoned for such use, which is the crux of Mr. Sansoucy's approach. Added into the mix of factors not adequately considered in his appraisal are some questions regarding the adequacy of demand and the feasibility and cost of obtaining the requisite subdivision and other approvals that may be required which the board find make an alternative residential use of Lot 1 too speculative to be relied upon. The Golf Course is a legal, non-conforming use and the board finds the contributory value in this use, which can continue indefinitely, is higher than it would be if Lot 1 is isolated and viewed as a potential 10-lot single-family residential development.

For these reasons, the board finds the most reasonable method of estimating value is not the cost approach employed by Mr. Sansoucy for Lot 1, but rather applying a 30% allocation of the market value of the Golf Course treated as a single economic unit, encompassing both Lot 1 and Lot 3, using the income approach. As further discussed in the concurrent decisions in the Shelburne appeals (and incorporated herein by reference), the Taxpayer met its burden of proving disproportionality and

[1] See also the "RDL Appraisal" (Taxpayer Exhibit No. 2) of the Golf Course, which notes: "[a]ll of the land parcel in Gorham and a significant portion of the Shelburne parcel appears to be located in a flood hazard area" (at p. 18); and "given today's environmental concerns regarding land use, it is likely the Gorham parcel would remain in a natural state due to its flood zone designation" (p. 33), rather than being developed for residential or other use if it were vacant.

the board finds the taxable market value of the Golf Course was $750,000 in each tax year. Below is a grid explaining how the board allocated this value and the indicated assessments resulting from this allocation:

Androscoggin Valley Golf Course	Allocation	Estimated Market Values		Levels of Assessment		Indicated Assessments	
	Percentage	2006	2007	2006	2007	2006	2007
Total Estimated Taxable Value		$750,000	$750,000				
Shelburne (Lot 3)	70%	$525,000	$525,000	101.7%	100.6%	$533,925	$528,150
Gorham (Lot 1)	30%	$225,000	$225,000	57.2%	100.6%	$128,700	$226,350

The appeals are therefore granted and the assessments on Lot 1 are abated to $129,000 (rounded) in tax year 2006 and $226,000 (rounded) in tax year 2007.

The "Requests" received from the Town are replicated below, in the form submitted and without any typographical corrections or other changes. The board's responses are in bold face. With respect to the Requests, "neither granted nor denied" generally means one of the following:

a. the Request contained multiple requests for which a consistent response could not be given;

b. the Request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;

c. the Request contained matters not in evidence or not sufficiently supported to grant or deny;

d. the Request was irrelevant; or

e. the Request is specifically addressed in the Decision.

TOWN OF GORHAM'S REQUESTS FOR
FINDINGS OF FACT AND RULINGS OF LAW

FINDINGS OF FACT

1. The Taxpayer as of April 1, 2006 was the owner of property located at 2 Main Street, Gorham, New Hampshire (the "Property").

Granted.

2. The Property is used as an 18-hole golf course.

Granted.

3. The Property contains approximately 33 acres in the Town of Gorham, with three golf holes in Gorham and with buildings and improvements and contains approximately 120 acres in the Town of Shelburne.

Neither granted nor denied.

4. This appeal involves the tax year 2006 and 2007.

Granted.

5. The Town assessed the Property for 2006 at $289,700.00 and $343,300 for 2007.

Granted.

6. The equalization ratio as published by the Department of Revenue Administration for the Town was 57.28% for 2006 and 100% for 2007.

Neither granted nor denied.

7. The property is a non-conforming use and is operated essentially as a not for profit use.

Neither granted nor denied.

8. The Town undertook and produced a summary report of the property for the Gorham land by George Sansoucy.

Granted.

9. Mr. Sansoucy is qualified as an expert to value the Property.

Granted.

10. The Town summary report for the value of the property used a cost approach for the improvements and a comparable sales approach for the land.

Granted.

11. This analysis to appraise the property in 2006 and 2007 is an acceptable method of assessing property for ad-valorem taxes in New Hampshire and was appraised according to generally acceptable assessment standards.

Neither granted nor denied.

12. Using this analysis, the Town's expert determined the fair market value of the property to be $343,300 for 2006 and $343,300 for 2007.

Granted.

13. Applying the equalization ratio for 2006 to the fair market value of the property reflects an assessed value of $196,367.60 for the tax year 2006 and applying the equalization ratio to the fair market value for 2007 reflects an assessed value of $343,300.

Neither granted nor denied.

14. The Taxpayers' is entitled only to an abatement for 2006 for the difference in the actual assessed value and the revised assessment for 2006 as set forth in the previous paragraph and is not entitled to an abatement for 2007.

Denied.

15. The income approach is not the proper method for valuing the property for the land and improvements where the property is located in two communities.

Denied.

16. The Taxpayer failed to show an acceptable allocation methodology for the separation of value between the Town of Gorham and the Town of Shelburne.

Neither granted nor denied.

17. The Taxpayer failed to submit evidence to carry its burden that the value between Gorham and Shelburne should be allocated 75% to Shelburne and 25% to Gorham.

Neither granted nor denied.

18. In the absence of any evidence to regarding an acceptable method to allocate value the Taxpayer has not carried its burden.

Neither granted nor denied.

RULINGS OF LAW

19. The Town may abate any tax assessed by them for "good cause shown." RSA 76:16.

Granted.

20. The Taxpayer has the burden of proof and must show disproportionality with respect to other property in the town by a preponderance of the evidence. Appeal of City of Nashua, 138 N.H. 261, 265 (1994); Appeal of Andrews, 136 N.H. 61, 64 (1992).

Granted.

21. The cost approach for improvement and the comparable sales approach for land using a mass appraisal CAMA system used to assess the property in 2006 and 2007 is an acceptable method of assessing property for ad-valorem taxes in New Hampshire.

Granted.

22. The Town correctly assessed the Taxpayers' property for the tax years 2007 but for 2006 the taxpayer is entitled to only an abatement of the difference of the fair market value for 2006 adjusted by an equalization factor of 57.2% or $93,332.40.

Denied.

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.

If the taxes have been paid, the amount paid on the value in excess of $129,000 (rounded) in tax year 2006 and $226,000 (rounded) in tax year 2007 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Until the Towns undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the Towns shall use the ordered tax year 2007 assessment of $226,000 for subsequent years. RSA 76:17-c, I and II.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; Steven A. Clark, Esq., Boutin & Altieri, P.L.L.C., PO Box 1107, Londonderry, NH 03053, counsel for the Town of Gorham; Chairman, Board of Selectmen, Town of Shelburne, 74 Village Road, Shelburne, NH 03581; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm for the Town of Shelburne.

Date: May 26, 2009

_____
Anne M. Stelmach, Clerk

Androscoggin Valley Country Club

v.

Town of Gorham

Docket Nos.: 22744-06PT/23419-07PT

ORDER

Both the "Taxpayer" and the Town of Gorham ("Gorham") have filed rehearing motions with respect to the May 26, 2009 Decision ordering an abatement in each tax year. The Taxpayer's rehearing motion contends the board erred by not deducting more for personal property from the going concern value of the "Property," an 18-hole golf course, and therefore the taxable value should be lower. Gorham's rehearing motion objects to assessing the Property based on an allocation of value as 70% Town of Shelburne ("Shelburne") and 30% Gorham and incorporates Shelburne's arguments in a separate rehearing motion (filed in Docket Nos. 22751-06PT and 23420-07PT) that the taxable value of the Property as a whole, before allocation, should be higher.

Both rehearing motions are denied as they fail to show "the board overlooked or misapprehended the facts or the law…" in the Decision. RSA 541:3; Tax 201.37(e). See Appeal of Nashua, 138 N.H. 261, 263-64 (1994). Because the Decision adequately details the board's findings on the conflicting evidence and arguments presented, no rehearing or reconsideration is warranted.

The Taxpayer's argument that the board should have made a larger deduction for personal property is without merit. The Taxpayer's own expert, Mr. Schubert, and another expert,

Andrew LeMay, presented appraisals where both deducted $50,000 for personal property, as did the board in estimating the taxable market value of the Property.

Gorham's primary argument at the hearing emphasized no allocation percentage was appropriate because its assessor, George Sansoucy, contended the portion of the Property in the Town should be valued separately, not as part of a golf course, but as potentially developable land that could be valued independently of the land owned in Shelburne. This approach, according to Mr. Sansoucy, was preferable and, if followed, no percentage allocation between the municipalities would be necessary. While Mr. Sansoucy did also mention three possible allocation percentages (34%, 42% and 55%) at the hearing, the board does not agree it is obligated to accept any of these percentages or the "mid-range" of them simply because Mr. Sansoucy is an "expert." Mr. Sansoucy's role in these appeals was as Gorham's assessor, the same role Mr. Roberge has for Shelburne. Shelburne presented an expert of its own, Andrew LeMay, who indicated a 25% Gorham, 75% Shelburne allocation was appropriate in his appraisal (Municipality Exhibit A, at Part III, p. 18). The board has the authority to decide among conflicting positions and found, in these appeals, that the 30% Gorham, 70% Shelburne allocation proposed by Mr. Roberge at the hearing, which was also agreeable to the Taxpayer and its expert, was reasonable.

Any appeal must be by petition to the supreme court filed within thirty (30) days of the Clerk's date shown below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

_____
Paul B. Franklin, Chairman

_____
Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: Mark Lutter, Northeast Property Tax Consultants, 14 Roy Drive, Hudson, NH 03051, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Gorham, 20 Park Street, Gorham, NH 03581; and Steven A. Clark, Esq., Boutin & Altieri, P.L.L.C., PO Box 1107, Londonderry, NH 03053, counsel for the Town of Gorham.

Date: July 9, 2009

_____
Melanie J. Ekstrom, Deputy Clerk