

Elizabeth A. Cranston Irrevocable Trust

v.

Town of Windsor

Docket No.: 23066-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 abated assessment of \$170,552 (land not in current use (“NICU”) \$32,800; land in current use (“CU”) \$4,752; building \$133,000) on Map 1/Lot 4, a seasonal camp on a total of 52 acres, four of which are NICU and 48 of which are in CU (the “Property”). For the reasons stated below, the appeal for further 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, as abated, was still excessive because:

- (1) the sole access to the Property (and two other lots) requires crossing a bridge over White Pond Brook on North Star Road (which dead ends at the Property);
- (2) in November, 2006, after issuance of the tax bill, the Town notified the Taxpayer it would no longer maintain the bridge and North Shore Road and has posted a sign to this effect;
- (3) because of the access issue, the Taxpayer proposed a warrant article to require the Town to continue maintenance, but this article was rejected at town meeting; and
- (4) the Town's refusal to maintain the bridge and the road has substantially impacted the market value of the Property because, without continued maintenance of the bridge and road by the Town, the Property is "effectively land-locked."

The Town argued the assessment, as already abated, was proper because:

- (1) the assessment must be based on the market value of the Property as of April 1, 2006;
- (2) the Town did not formally notify the Taxpayer that it would stop maintaining the bridge and North Shore Road until more than six months later (through a written notice dated November 28, 2006 to the affected property owners);
- (2) as reflected on the assessment-record card, the Town assigned a "B" neighborhood code to reflect the lower quality access and gave the land a negative 30% adjustment because of this factor;
- (3) after the Taxpayer filed an abatement request in February, 2007 (Municipality Exhibit A), the Town made a 10% negative 'condition' adjustment which gave an additional \$4,100 abatement (to the \$41,000 primary four acre land value) because of the access factor;

(4) as a result of the mediation process aimed at encouraging settlement, the Town made a second 10% negative ‘condition’ adjustment to give another \$4,100 abatement for this factor reducing the primary land value to \$32,800, now reflected in Municipality Exhibit B;

(5) the April 20, 2009 “Motion to Enforce Settlement” (the “Motion”) filed by the Town’s assessors is based on the Town’s belief this abatement reflects agreement by the parties on a full settlement of this appeal that should be enforced; and

(6) in the alternative, even if the board finds no enforceable settlement has been reached, the Taxpayer has presented no market value evidence to support a further abatement on the Property.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the total abated assessment of \$170,552 on the Property for tax year 2006 is disproportional. The appeal is therefore denied.

At the April 23, 2009 hearing of this appeal, the board first heard arguments and then ruled on the Town’s Motion, filed just three days earlier, which attempted to establish the Taxpayer had agreed to, and should be bound by, this abated assessment as a final settlement of this appeal. The board reviewed the correspondence (e-mails and letters) attached to the Motion, other documents in its file and the testimony of the Town’s assessors (Loren Martin and Gary Roberge of Avitar Associates of New England, Inc. (“Avitar”)) and the Taxpayer’s representative (Althea B. Cranston, Trustee).

After considering the evidence as a whole, the board concluded the Town did not meet its burden of proving there was a “meeting of the minds” regarding a settlement of this appeal and

therefore denied the Motion.¹ Fairly construed, the evidence reflects miscommunication based on some confusion and misunderstandings regarding what would constitute the “full abatement” the Taxpayer was seeking. As noted above, the Town had granted a \$4,100 abatement on the land NICU after the Taxpayer filed an abatement request in February, 2007, but before an appeal was filed with the board in August, 2007. During the mediation process in June, 2008, the Town agreed to a second \$4,100 abatement (each constituting 10% of the initial assessment of the land NICU). The board was unable to find, however, that the Taxpayer, through its representative in this tax appeal, Ms. Cranston, ever agreed this step would result in a full settlement of the appeal.

While there is some suggestive general language in written communications initiated by the Town’s former attorney (Paul L. Apple, Esq.) with attorney Paul J. Alfano, Esq. on the issue of settlement and resolution of the appeal, there is no written confirmation or acceptance of the terms of a settlement by the Taxpayer. Further, Attorney Alfano, according to Ms. Cranston’s sworn testimony, did not represent the Taxpayer in this tax abatement appeal, but only on other issues with the Town pertaining to the bridge. Her position that the Taxpayer did not agree to a settlement of this tax abatement appeal is plausible and supported by the “amendment” to the “Report of Settlement Meeting,” which she promptly filed with the board in June, 2008 when she did not receive written confirmation of the “full abatement” she thought would be “forthcoming” from the Town (based on her settlement negotiations with a Town selectperson, Darlene Cuddy, who did not attend the hearing to testify or submit an affidavit regarding her understanding of whether a full settlement had been negotiated and agreed upon). The Motion made no mention

¹ It is well established that “[s]ettlement agreements are contractual in nature and, therefore, are governed by general principles of contract law” and a “valid, enforceable settlement requires offer, acceptance, consideration and a meeting of the minds.” *See, e.g., Poland v Twomey*, 156 N.H. 412, 414 (2007) (citations omitted). “A meeting of the minds occurs when there is mutual assent to the essential terms of the contract; that is, the parties have the same understanding of the same essential terms of the contract and manifest an intention to be bound by the contract.” *Id.*

of this amendment, apparently because the Town did not provide Avitar with a copy of this document.

Following the board's ruling denying the Motion, the Taxpayer was given an opportunity at the hearing to meet its burden of proving a further abatement is warranted. Ms. Cranston chose not to present any appraisal or other market evidence to establish the market value of the Property or show quantitatively how it was impacted by the lack of Town maintenance of the bridge and the road. Without such evidence, the board is unable to find the abated assessment of \$170,552 is disproportional.

In this regard, the assertions in the appeal document that the Property had a total market value of only \$40,000 (because of the Town's decision not to maintain the bridge) and that the Property is now "land-locked" are simply not credible. Assessments must be based on market value. See RSA 75:1. The Property consists of a total of 52 acres, with a seasonal camp residence having 4 bedrooms, 1 bath and 2,195 square feet, which has been owned by the same family (of the Taxpayer) since 1940. According to the February 7, 2007 department of transportation ("DOT") biennial inspection report of the condition of the bridge to the Town (submitted by the Taxpayer with its appeal document), the bridge is still usable but notice should be posted that it is a one-lane bridge with a weight limit of six tons. While the condition of the bridge is less than desirable and the potential cost of private maintenance is a cause for concern for the Taxpayer,² the board is unable to find access to the Property has been cut off or diminished to the point where the Property is actually "land-locked" and no longer usable,

² There is nothing to suggest the Town has a legal obligation under New Hampshire law to continue to maintain the bridge and North Star Road indefinitely. See, generally, H. Bernard Waugh, A Hard Road to Travel (1997 ed.), pp. 49-51 and 112-13, and the statutes and case law cited therein.

conditions which might persuade a fact-finder that the abated assessment on the Property is disproportional.

In addition, the board finds merit in the Town's position that it has properly addressed the access issue by reducing the assessment of the land NICU by a total of \$25,700. In other words, the resulting abated assessment of \$32,800 on this land is about 56% of what the assessment would be if the Property did not have an access issue at all.³ Consequently, the board is unable to find the Town has not adequately addressed this issue and the Taxpayer's concerns by abating the assessment as it already has for tax year 2006.

For all of these reasons, the appeal for further abatement on the Property is 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.

³ According to Avitar, in the assessing system used by the Town properties with no access issues have a Neighborhood designation of "E" on the assessment-record card, rather than the "B" assigned to the Property which resulting in the initial negative 30% adjustment to the base land value of \$58,500, and this was followed by the two subsequent negative 10% condition adjustments described above. See Municipality Exhibit B.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Albert S. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Althea B. Cranston, Trustee, Elizabeth A. Cranston Revocable Trust, 20 Winslow Road Belmont, MA 02478, representative for the Taxpayer; Chairman, Board of Selectmen, Town of Windsor, 14 White Pond Road, Hillsborough, NH 03244; and Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: May 1, 2009

Anne M. Stelmach, Clerk