

NOC Realty, LLC

v.

Town of Kingston

Docket No.: 23068-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$104,900 (land only) on Map R37/Lot 18-3, a 2.75 acre unimproved lot (the “Property”). 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) as a result of conditions imposed when the Taxpayer was seeking subdivision approval from the Town’s Planning Board, the Property, consisting of two parcels, one of which has no road

frontage (is “landlocked”) and the other has “minimal” road frontage, must remain unimproved, as explained in Taxpayer Exhibit No. 1;

(2) the approved subdivision plan specifically states these two parcels are non-buildable, as shown in Taxpayer Exhibit No. 2 (no building permit shall be issued by the Town, no construction of any type shall be allowed, the land shall be used “only for open space,” and no wells or septic systems can be located on the Property);

(3) the subdivision approval was necessary in order to develop the adjacent 7.25 acres of land owned by the Taxpayer in the Town of East Kingston, because a minimum of 10 acres was needed for a ‘55+’ residential condominium development; and

(4) the Town erred in assessing the land as if it could be developed and the assessment should be abated to \$20,000, based on its value as “backland” (rear or excess land) only.

The Town argued the assessment was proper because:

(1) while not developable on its own, the Property has considerable value since the Taxpayer would not have been able to receive development approvals and build and sell condominiums on the adjacent 7.75 acres of land located in the Town of East Kingston without it;

(2) as shown in Municipality Exhibit A, the Property was not disproportionately assessed, when the selling prices of three vacant lots in the Town and the sale prices and assessments of the condominium units built in the neighboring Town of East Kingston are considered; and

(3) the Taxpayer failed to meet its burden of proof.

The parties stipulated the level of assessment in the Town was 84.7% for tax year 2006.

Board’s Rulings

Based on the evidence, the board finds the Taxpayer failed to meet its burden of proving the Property was overassessed. The appeal is therefore denied for the reasons discussed below.

This appeal raises the interesting issue of the proportionality of assessments on land owned by a Taxpayer in two municipalities, where development on land in one is clearly dependent on ownership of land in the other, which must remain undeveloped to meet the requirements for development of the adjacent land. Here, the evidence is undisputed that the Taxpayer would not have been able to develop an 11-unit residential condominium project in East Kingston without having ownership of the Property in the Town because the Property's 2.75 undeveloped acres of land in the Town, combined with the adjacent 7.25 acres of land in East Kingston, were both necessary to meet a minimum 10 acre zoning requirement for this project.

Assessments must be based on market value, see RSA 75:1, and “[a]ll real estate, whether improved or unimproved, shall be taxed, except as otherwise provided.” RSA 72:6. Further, RSA 21:21 defines real estate to include “all rights thereto,” whether they are tangible or intangible in nature. Because real estate rights are varied and can be segmented, each property is understood to have a “bundle of rights” associated with it, much like a “bundle of sticks,” with each stick representing a distinct or separate right or interest. See Appraisal Institute, The Appraisal of Real Estate (12th ed. 2001) at p. 8. Consequently, in valuing the bundle of rights associated with each property, all relevant factors must be considered. Paras v. Portsmouth, 115 N.H. 63, 67-78 (1975). The board finds one very relevant factor augmenting the value of the Property, beyond what it would be simply as unimprovable rear or excess land, is its continued importance in satisfying the development requirements for the other land owned by the Taxpayer.

The Taxpayer did not present any market value evidence, either for the Property considered in isolation or for the 10 acres of land considered as a whole or how that total value should be allocated between each municipality (the Town and East Kingston). Instead, the

Taxpayer (in the appeal document) identified one property (owned by W. Herbert Carey, Jr.) where 0.66 acres of usable land located in an abutting municipality (Exeter) was assessed at \$10,100. The Taxpayer stated this land was used to satisfy a house lot size requirement on neighboring land in the Town, but did not provide any details regarding the valuation or assessment of the house lot or either of the assessment-record cards pertaining to the Carey property. The Taxpayer simply used the \$10,100 assessed value (of the Carey lot in Exeter) to extrapolate a \$20,000 market value for the Property (perhaps to reflect its larger acreage) in the Town.

The board finds, however, this information submitted by the Taxpayer, even if accepted at face value, is not at all probative of the market value of the Property and does not satisfy the Taxpayer's burden of proof in this appeal. In this regard, the appeal document (filed with the board on August 30, 2007) also mentioned the Taxpayer would have an "appraisal soon," but no appraisal of the Property or other market value evidence was produced, either before or at the hearing.

While the Taxpayer is correct the restrictions on the Property imposed during the subdivision approval process mean it cannot be sold separately as a developable lot (which negates the reliability of comparisons to the Town's three vacant lot sales, each of which was later developed), this does not necessarily mean the Property has a lesser value than indicated by the Town's assessment. Since the Taxpayer's condominium development could not have been built or maintained without continued ownership of the Property, credible market value evidence could have focused on how much would a developer have been willing to pay to acquire the Property in order to develop the condominium project or, alternatively, how much would be lost ("just compensation") if the Property had been taken in an eminent domain proceeding. These

are recognized methods of estimating the transmissible value of taxable property, but no evidence was presented by either party that would allow the board to answer these questions precisely.

The Town defended the proportionality of the assessment with the documents and analysis contained in Municipality Exhibit A. This exhibit identifies three vacant land sales in the Town (which ranged in price from \$145,000 to \$170,000) and, of more interest, the sale prices and assessments of seven condominium units sold on the adjacent land in East Kingston, as well as providing their assessment-record cards. All of the condominium sales occurred after the assessment date (between April 27, 2006 and May 14, 2007) and each unit sold for more than its (East Kingston) assessed value. As shown in this exhibit, the range of sale prices for the seven units was \$309,000 to \$369,000 and the range of assessments was \$274,000 to \$279,100. None of the assessments pertaining to the 7.25 acres of land located in East Kingston on which these units are physically located (shown as a uniform \$93,000 “features value” on each unit’s assessment-record card) have been appealed to the board. The Town reasoned that if the assessment on the Property (\$104,900) was allocated on a per unit basis to the condominiums in East Kingston, the hypothetical, higher assessed value of each unit would still be proportional (resulting in an “average” assessment to sale ratio of 84%). Viewed in a different way, the Town’s assessment on the Property (2.75 acres of land assessed at \$104,900 allocated between 11 units = \$9,536.36 per unit) represents approximately 3% of the assessed value of each condominium in East Kingston.

It is not unreasonable to conclude the market value of the Property could well be more than the equalized value of the assessment ($\$104,800$ divided by $84.7\% = \$124,000$ (rounded)), taking into account the probable value of the condominium project as a whole (which can

conservatively be estimated at more than \$3.5 million, since the median unit selling price of the units, as built, was \$339,000 in the evidence presented by the Town). If so, the Property could be underassessed rather than overassessed.

Notwithstanding the reasonableness of this conclusion, there is no question the assessment on the Property could have been clarified and improved if the Town's assessor had taken the opportunity to confer with the assessor in East Kingston to come up with a better basis for valuing the taxable property as a whole and then allocated that land value between the two towns in a manner that was more transparent and easier to understand.¹ At the very least, the Town should update and correct the information contained on the assessment-record card to reflect the undisputed fact the Property cannot be developed as a separate lot because of the restrictions discussed above.

Every taxpayer has an interest in having its property proportionally assessed, not only when its entire estate (consisting of two or more lots) is located in one municipality, see Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), but also in the relatively uncommon situation presented in this appeal where two adjacent lots are located in neighboring municipalities and both lots serve a unified development purpose and have interdependent value. While it is possible, in theory, that the contributory value of the Property is less than the value indicated by the Town's assessment, the Taxpayer failed to present any market evidence to support such a finding.

¹ A flawed methodology, however, is not grounds for an abatement, even if facts could be presented to support such a finding, unless a taxpayer can show the resulting assessment is disproportional based upon the market value of the property and the level of assessment. Cf. Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). Moreover, there is never one exact, precise or perfect assessment for any property; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

In summary, the Taxpayer has not met its burden of proving the Property was disproportionately assessed at \$104,900 and the appeal 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.

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: NOC Realty, LLC, Glenn J. Tebo, Manager, PO Box 754, Kingston, NH 03848, Taxpayer; Chairman, Board of Selectmen, Town of Kingston, PO Box 716, Kingston, NH 03848; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: April 2, 2009

Anne M. Stelmach, Clerk