

**George E. Nicolaou**

**v.**

**Town of Dunbarton**

**Docket No.: 24888-09PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2009 assessment of \$115,600 (land \$91,200; building \$24,400) on Map D3/Lot 03/01, a single family home on 3.15 acres (the “Property” or “Lot 1”). The Taxpayer also owned, but did not appeal the assessment on Map D3/Lot 03/05 (“Lot 5”), an undeveloped 2.24 acre parcel assessed at \$47,800. For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) as shown by the photographs in Taxpayer Exhibit No. 2, the Property was damaged by a car fire in the garage in 2002 which spread to the house which, in its present smoke damaged and moldy condition, actually devalues the Property;

(2) the proceeds received from the insurance company, after extended litigation, was only 40% of what it should have been and it will cost \$25,000 to demolish and remove the damaged structure and would cost twice as much to repair the house as it would to build a new house after demolition;

(3) the only value in the Property is in the land and this value is only \$2,953.12 based on the sale prices of one environmentally damaged property (260 Stark Highway) and another property (344 Stark Highway); and

(4) the assessment should be abated to this estimated land value (\$2,953.12).

The Town argued the assessment was proper because:

(1) the Town performed revaluations in 2005 and in 2010 conducted by Vision Appraisal Technology;

(2) in order for the Taxpayer to qualify for a tax abatement his entire estate must be considered, including both Lot 1 and Lot 5;

(3) even if the assessment on Lot 1 is "too high," Lot 5 is underassessed and the combined assessment on both lots (the Taxpayer's entire estate) is proportional;

(4) the comparable sales and analysis in Municipality Exhibit A support the Town's position that no abatement is warranted;

(5) the Taxpayer's comparisons of the Property to two other sales are invalid as the two sales are not of comparable properties;

(6) as also shown in Municipality Exhibit A, the Taxpayer marketed both Lot 1 and Lot 5 separately for prices much higher than their assessed values; and

(7) the Taxpayer failed to meet his burden of proving disproportionality.

The parties agreed the level of assessment was 109.1% in tax year 2009, the median ratio calculated by the department of revenue administration.

### **Board's Rulings**

Based on the evidence, the board finds the proper assessment on the Property to be \$66,600 (rounded). The appeal is therefore granted for the reasons discussed below.

The board arrived at this abated value by using the \$86,000 indicated market value for the Property calculated by the Town in Municipality Exhibit A as a starting point, deducting the estimated \$25,000 cost of demolition, and adjusting the resulting amount (\$61,000) by the 109.1% level of assessment. The board finds the evidence as a whole supports the conclusion the house on the Property could not reasonably be sold to a knowledgeable buyer in its present fire damaged and moldy condition and that demolishing the existing structure will be necessary. On the other hand, the sales listed by the Town indicate the lot is a buildable lot and has far more value, based on the comparable sales in Municipality Exhibit A, than the \$2,953.12 estimated by the Taxpayer.

The board also took into account the evidence presented by the Town that the adjacent property owned by the Taxpayer (Lot 5) was underassessed to some extent. Lot 1 and Lot 5 resulted from a subdivision which the Taxpayer initiated in 2002. Lot 1 consists of 3.15 acres and Lot 5 consists of 2.24 acres. The Taxpayer presented no evidence regarding the value of Lot 5 and the board finds the Town's evidence to show Lot 5 should have had a higher assessment of

\$69,800 (rounded) in tax year 2009 (instead of \$47,800) is reasonable. (See Municipality Exhibit A.)

The board has no authority to increase the assessment on Lot 5 in the course of this appeal because the tax abatement statutes are remedial in nature and an assessment cannot be increased in the course of an appeal. See LSP Assoc. v. Town of Gilford, 142 N.H. 369, 374-75 (1997). On the other hand, the board must consider the Taxpayer's entire estate (both the Property and Lot 5) to determine whether the total assessment on both properties is proportional before an abatement on the Property can be granted. Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). In other words, a taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportional. See also Bemis &c. Bag Co. v. City of Claremont, 98 N.H. 446, 449 (1954); and Amoskeag Mfg. Co. v. City of Manchester, 70 N.H. 200, 205 (1899). ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant.").

Therefore, when a taxpayer owns more than one parcel, an appeal for abatement on any one property will always require consideration of the assessments of any other properties. The board has done so here and finds the assessment on the Taxpayer's entire estate is disproportional and an abatement on the Property is warranted. This is because the abated assessment on the Property (\$66,600) and a proportional assessment of Lot 5 (\$69,800) total \$136,400 in tax year 2009, less than the actual total assessment on the Taxpayer's entire estate (\$115,600 assessment on the Property + \$47,800 assessment on Lot 5 = \$163,400 total assessment).

Having reached this determination an abatement on the Property is warranted, the board will briefly explain why it does not agree with the Taxpayer's much lower estimate (\$2,953.12)

of market value. The board heard evidence the Taxpayer actively marketed the Property over a prolonged period of time for much higher prices (ranging from \$150,000 to \$249,900 as shown in the multiple listing information contained in Municipality Exhibit A). His claim that the Property is worth ‘almost nothing’ is therefore not credible.

More importantly, the board does not agree with the Taxpayer’s belief the Property, a residential buildable lot, can reasonably be compared in value to the \$12,500 public auction price for a 15-acre commercial lot (260 Stark Highway, Map H3/Lot 1/2) with significant environmental contamination issues<sup>1</sup> at a high-traffic intersection or the \$90,000 price paid for a 12-acre residential lot (344 Stark Highway, Map 5/Lot 3/4) which has no well or septic, 10 acres in current use and is encumbered by a PSNH easement. Deriving a per acre value from these sales (\$12,500 divided by 15 acres = \$833 per acre for the first property and \$90,000 divided by 12 acres = \$7,500 per acre for the second) is misleading, at best, since a potential buyer of the Property would be interested in obtaining a residential buildable lot and would place primary value on this feature and a much lower value on any excess land associated with a buildable lot.

In summary, the Taxpayer did not meet his burden of proving a residential buildable lot would have only a nominal value in the Town. Instead, the board finds the Town’s \$86,000 estimate, based on the comparable sales in Municipality Exhibit A, for such a lot (less the \$25,000 estimated demolition costs) is reasonable and reflective of the market. The board therefore finds the assessment of the Property should be \$66,600, rounded (\$61,000 times 109.1% level of assessment).

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<sup>1</sup> In the board’s experience the market value of an environmentally contaminated commercial site with underground oil storage tanks is likely to be adversely impacted by the anticipated costs of remediation, ongoing monitoring and the potential liability to surrounding properties. These costs and liability issues are much more difficult to quantify and, in all likelihood, are much more substantial than the demolition costs of the house on the Property, which the Taxpayer estimated to be \$25,000.

If the taxes have been paid, the amount paid on the value in excess of \$66,600 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.

Any party seeking a rehearing, reconsideration or clarification of this Decision must file a motion (collectively "rehearing motion") 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 with a copy provided to the board in accordance with Supreme Court Rule 10(7).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: George E. Nicolaou, PO Box 334, Goffstown, NH 03045, Taxpayer; Chairman, Board of Selectmen, Town of Dunbarton, 1011 School St., Dunbarton, NH 03046; and Municipal Resources, Inc., 295 No. Main Street, Salem, NH 03079, Contracted Assessing Firm.

Date: November 16, 2011

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Anne M. Stelmach, Clerk