

Brandon D. and Judy M. Haynes

v.

Town of Columbia

Docket No.: 25609-10PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2010 assessment on Map 418/Lot 1, a 74 acre lot located on Jackson Road, consisting of: three acres of land (the “Property”) not in current use (“NICU”) assessed at \$13,100; and 71 acres of land (the “CU Property”) in current use (“CU”) assessed at \$5,613. The Taxpayers also own, but are not appealing, Map 410/Lot 22, 58.37 acres of land in CU assessed at \$5,600. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 their assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers requested and were granted leave, pursuant to Tax 202.06(d) – (f), not to attend the hearing because they reside in Virginia. They do not contest the assessment on the CU Property but argue, in the appeal document and subsequent correspondence to the board, the assessment on the Property was excessive because:

- (1) all of the land has been in the family for approximately 75 years;
- (2) they elected not to put the Property, consisting of three acres in total, in CU “in order to maintain some control over at least a small piece of our property,” but they have no present intention or ability to develop or sell it;
- (3) the Town should assess the Property as though it were in CU since it “should be classified as unmanaged other (UNMANGD OTHER) the same as the rest of the lot”;
- (4) the Property has poor access (requiring a 4-wheel drive vehicle in the summer and a “snow mobile” in the winter); and
- (5) the assessment on the Property should be reduced to no more than “around \$700 per acre.”

The Town argued the assessment was proper because:

- (1) the Town’s assessor visited the Property “last Wednesday” (before the June 12, 2012 hearing) and took the pictures in Municipality Exhibit A, which show the Property is cleared of trees, is level and has a “mobile home” (residential trailer) and car on it;
- (2) the Town’s records reflect the Taxpayers intentionally kept the Property out of CU, when they applied for and received this classification for the rest of their land in the 1990’s;
- (3) the Property is a developable residential lot in “Neighborhood B” (as shown in Municipality Exhibit D) about ½ mile up a “Class VI” road (Jackson Road, connecting to Fish Pond Road) and has reasonable access;

(4) the Town performed a revaluation in 2010 and the sales and assessments on comparable property in this area of the Town (shown in Municipality Exhibits B and C) confirm the \$13,100 assessment reflects the market value of the Property as of the assessment date (April 1, 2010); and

(5) the Taxpayers did not meet their burden of proving disproportionality.

The level of assessment in the Town was 96.3% in tax year 2010, the median ratio calculated by the department of revenue administration.

Board's Rulings

The board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied for the following reasons.

The Taxpayers acknowledge they had the opportunity to place the Property in CU (like the rest of their land) but chose not to do so in order to maintain "control" over it. In their June 5, 2012 letter to the board, the Taxpayers state "the problem is not so much with the assessed valuation as with the arbitrary assignment of Land Type" which they claim should be "the same as the UNMANGD OTHER that surrounds it." That, however, is a CU classification with an assessment based on much lower values established state-wide by the Current Use Board, not an assessment based on market (ad valorem) value. In sum, the Taxpayers contend the Town should have assessed and taxed the Property as if it were in CU even though they chose not to apply for this classification.

For the Town to do so would be contrary to the system of property taxation in New Hampshire enacted by the legislature, a system that clearly distinguishes ad valorem assessments based on market value (governed by RSA 75:1) and CU assessments based on lower values (governed by RSA 79-B:3). It is well established that, in order to arrive at a proportional

assessment, a municipality is required to assess land NICU at market value and not at the much lower values for CU land. See, e.g., Dana v. Town of Dalton, BTLA Docket No. 16335-95 (March 27, 1997).¹

Based on the law and the evidence presented, the board finds the Town did not act in an “arbitrary” manner when it assessed the Property at its ad valorem value because, under the law, it was obligated to do so. Moreover, in arriving at the \$13,100 assessment for the Property, the Town made several significant adjustments to the base rate that lowered the value, including a 30% negative adjustment for neighborhood and a 25% negative adjustment for “condition,” as shown on the assessment-record card. The board finds these adjustments were reasonable and sufficient to take into account all of the concerns mentioned by the Taxpayers.

At the hearing, the Town presented comparable sales data for 18 properties. (See Municipality Exhibit B.) Included among these sales (and noted by the Town) was Map 416, Lot 55/3, a 3.04 acre lot (taken out of CU), which sold for \$25,000 in July, 2009. The Town also presented comparable assessments on other properties on or near Jackson Road to demonstrate

¹ In Dana, the board explained:

The issue before the board is what is the proper ad valorem value for the portion of the land NICU and what factors should be considered in arriving at its proper value. The 1.0-acre NICU must be assessed at market value as defined in RSA 75:1 considering all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). The bases for such a determination is contained in the statutes and the principles of appraising. . . .

When a property is subject to current-use assessment, certain rights and value influencing factors are temporarily veiled and not valued for taxation purposes. N.H. CONST. pt. II, art. 5-B; RSA 75:1; chap. 79-A. These rights and factors still exist and are held by the owner, but they are suppressed or restricted by current use for tax purposes until sometime in the future when the land that embodies those rights or value influencing factors no longer qualifies for current use and is then assessed at market value. Land NICU does not have its rights or factors restricted by current-use assessment and should be valued at its highest and best use considering the rights and factors directly inherent in the land NICU.

how the base rates and adjustments were established and applied to land in the same neighborhood as the Property. (See Municipality Exhibit C.)

In this regard, the assessments on the two properties mentioned by the Taxpayers in their June 5, 2012 letter (Map 418, Lot 5 and Map 406, Lot 39, both of which were included in the Town's comparables in Municipality Exhibit C) do not support their claim to a tax abatement. These two lots are in CU and were assessed as such ("UNMANGD OTHER"), not at the ad valorem values that would be required if they consisted of land NICU like the Property.

Nor is the board persuaded by the "asking" prices mentioned by the Taxpayers in the attachment to their April 11, 2012 letter, without any supporting or corroborating information of any kind (such as copies of the broker listing sheets and copies of the assessment-record cards). These prices are for three lots much larger in size than the Property (consisting of 58 acres, 100 acres and 30.85 acres), two of which are in other municipalities (Colebrook and Pittsburg) and may have other distinguishing attributes. The Taxpayers did not provide any information regarding the listings that would allow the board to determine if these properties are in fact comparable to the Property.

Lastly, the Taxpayers reference and quote from the "Tyler Road Development Corp. v. Town of Londonderry" case (145 N.H. 615 (2000)) in their April 11, 2012 submission. In doing so, they appear to confuse the assessment of taxation of CU property, an annual process, with the imposition of a separate land use change tax ("LUCT") at the time a property is removed from CU (as provided in RSA 79-A:7). No LUCT issues are involved in this appeal.

For these reasons, the board finds the Taxpayers failed to meet their burden of proving disproportionality. The appeal is therefore denied.

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

Albert F. Shamash, Esq., Member

Theresa M. Walker, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Brandon D. and Judy M. Haynes, 14532 Sir Peyton Drive, Chester, VA 23836, Taxpayers; Chairman, Board of Selectmen, Town of Columbia, PO Box 157, Colebrook, NH 03576; and Brett S. Purvis & Associates, Inc., 3 High Street, 2A, PO Box 767, Sanbornville, NH 03872, Contracted Assessing Firm.

Date: 6/21/12

Anne M. Stelmach, Clerk