Nicolas and Jill Bosonetto

v.

Town of Richmond

Docket No.: 26769-12PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the ad valorem portion of the "Town's" 2012 abated total assessment of $196,703 on Map 412/Lot 001, 63-79 Prospect Hill Road, a single family home and three mobile homes on 38 acres of land (the "Property"). Approximately 26.4 acres of the land is in current use and is assessed at $1,603 and the parties do not dispute this portion of the total assessment. [The Taxpayers also own, but did not appeal, another parcel (Map 412/Lot 001-1) with land assessed in current use at $31 and the parties do not dispute this value.[1]] For the reasons stated below, the appeal for abatement on the ad valorem assessment of the Property is denied.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment under appeal 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

[1] Taxpayer Exhibit No. 2 contains information regarding another parcel, Map 9/Lot 4, which the Taxpayers purchased in January, 2014, well after the April 1, 2012 assessment date.

Taxpayers must show the assessment was higher than the general level of assessment in the municipality. Id. The board finds the Taxpayers failed to prove disproportionality.

The Taxpayers argued the abated ad valorem assessment was still excessive because:

(1) when they applied for a building permit in 2009, the Town denied the permit because "the property is on a private road . . ." (see Taxpayer Exhibit No. 1, a June 8, 2009 letter from the Selectmen) and they believe RSA 674:41 prohibits the Town from issuing a building permit for property on a "private road";

(2) the best evidence of the market value of the Property, given its diminished "bundle of rights" due to its location on a private road and the Town's zoning, is the $55,000 value (as of January 29, 2013) stated in the "Wells Appraisal" (Taxpayer Exhibit No. 3); and

(4) the assessment should be further abated based on a market value of $55,000 (adjusted by the level of assessment in the Town).

The Town argued the assessment was proper because:

(1) the Town inspected the Property during the abatement process and made appropriate adjustments (reducing the assessment from $217,436) after considering the Taxpayers' taxable estate and taking into account all relevant factors including the location on a private road;

(2) the Wells Appraisal relied upon by the Taxpayers in fact supports the proportionality of the assessment under appeal because Mr. Wells estimated the total market value of the Property to be $362,000, well above the abated value in tax year 2012;

(3) contrary to the Taxpayers' arguments, the 2009 permit application was denied by the Town's Board of Adjustment because the Taxpayers wanted to construct a new dwelling "in a different location" on the Property (see August 12, 2009 Notice of Decision in Taxpayer Exhibit No. 1);

(4) although the Property is on a private road, the Taxpayers would not be prevented from repairing or renovating the existing structures and the Town does not agree that RSA 674:41 would prevent them from obtaining a permit to do so; and

(5) the Taxpayers failed to meet their burden of proving disproportionality and their appeal for further abatement should be denied.

The parties agreed the level of assessment in the Town was 98.3 percent in tax year 2012, the median ratio calculated by the department of revenue administration. At the hearing, the Taxpayers submitted "Requests for Findings of Fact/Rulings of Law"; the board has responded to these "Requests" in Addendum A attached hereto. (Included in the Requests is a "Memorandum of Law" which the board has also considered and addressed in its Rulings.)

Board's Rulings

Based on the evidence and arguments presented, the board finds the Taxpayers failed to meet their burden of proving the Property was disproportionally assessed in tax year 2012. The appeal for further abatement is therefore denied for the following reasons.

The Taxpayers argued that, because of the perceived restrictions on the further development of the Property (due to its location on a private road), they have less than a

full "bundle of rights"[2] and, based on the Wells Appraisal, the market value subject to ad valorem assessment in tax year 2012 is $55,000. The board does not agree.

As described in the Wells Appraisal (p. 3) and reflected on the Town's assessment-record cards ("ARCs"), the Property consists of a large parcel of land improved with four separate residential structures: a 1 ½ story 1,446 square foot (stick built) home "in average/fair condition and three mobile homes in similar condition," as well as garages. (See also the ARCs and Finding Request No. 2.)

The Taxpayers testified they purchased the Property in 2006 for $190,000. (See Finding Request No. 4.) This is some indication of the reasonableness of the abated assessment in the absence of compelling market evidence to the contrary.

---

[2] The Taxpayers rely on White v. Town of Sunapee, BTLA Docket No. 17763-98PT, where the board discussed the bundle of rights concept as follows (on pp. 2-3):

> In valuing property, all real estate rights, tangible and intangible, are assessed:
>
> **RSA 21:21 Land; Real Estate.**
> I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein. (Emphasis added.)
>
> While they vary from property to property, these ownership rights are often viewed as a "bundle of rights." "Ownership rights include the right to use real estate, to sell it, to lease it, to enter it, to give it away, or to choose to exercise all or none of these rights. The bundle of rights is often compared to a bundle of sticks, with each stick representing a distinct and separate right or interest." Appraisal Institute, The Appraisal of Real Estate 7 (11th Edition 1996). When appraising a property that has no restrictions of rights (beyond being subject to taxation, eminent domain, police power and escheat), these rights are normally viewed collectively (as a bundle) and valued after a highest and best use analysis of the entire property.
>
> The highest and best use must be one that is legally permissible, physically possible, and financially feasible. In most properties there are many factors that influence value and contribute to the determination of highest and best use. Such factors are nearly endless but commonly include influences, both internal and external, to the property such as location, size, utility, access, improvements, topography, view, and zoning. In this case, there is no doubt that the right-of-way access to the water, despite its deficiencies, adds to the market value of the Property.

More importantly, a review of the evidence presented indicates the Town did not err regarding assessment of the actual "bundle of rights" associated with the Property. In fact, the Town recognized the Property was located on a private road and, while this might limit its development potential compared to a comparable property on a public road, it does not establish the Property has the very low market value ($55,000) asserted by the Taxpayers.

The Taxpayers relied entirely upon the Wells Appraisal to establish the disproportionality of the assessment. Mr. Wells estimated the following values of the Property as of January 29, 2013: the land and improvements "with legal recognition from the Town of Richmond and building permits readily available" -- $362,000; the "current value" -- $55,000; and the "value in use" -- $307,000 (the difference between the first two values). The board cannot place any weight on the Wells Appraisal for a number of reasons.

First, the board does not agree with several assumptions made by Mr. Wells that materially impacted the credibility of the market value conclusions reached in his appraisal. Mr. Wells received the following as his "Instructions to the Appraiser" (apparently from his client, Mr. Bosonetto, one of the Taxpayers): "The property should be valued for Value in Use [ ] without legal permits and with legal building permits [sic]." (Wells Appraisal, p. 8.)

It is clear Mr. Wells did not make an independent investigation into whether the Town would issue building permits on the Property. Instead, his transmittal letter (included in the Wells Appraisal) states, without adequate support, that "[t]he present improvements cannot be upgraded for everyday use as any contractor, electrician or plumber would require permits from the Town of Richmond, which they clearly state they will not issue." His appraisal specifically disclaims giving any "opinions" regarding "legal matters," including the crucial assumption regarding whether or not building permits can be obtained for the Property. This was an

extraordinary assumption he made in order to arrive at his conclusions[3] but is not borne out by the facts presented in this appeal.

The evidence shows the Town denied an application for a building permit under a specific set of circumstances (namely: removal of one of the manufactured homes and construction of another single-family residence on a different footprint and in a different location than the manufactured home). However, there is no evidence before the board that would allow it to find the Town would not issue permits in any circumstances. In fact, such a finding would be in direct contradiction to the testimony of Sandra Gillis, a Town Selectman. In addition, Section 1103 of the Town's Zoning Ordinance (in Municipality Exhibit A) specifically provides "no building permit shall be required for normal maintenance activities, minor repairs and minor alterations that do not structurally alter or change a building or structure."

The 2012 supreme court decision concerning the Property confirms this same point. [See Municipality Exhibit B: Bosonetto v. Town of Richmond, slip. op., S. Ct. Case No. 2011-83 (June 29, 2012).] In that decision the supreme court recognized a property owner has the "right to continue a nonconforming use" after a change in a zoning ordinance, but found the ZBA did not err because its 2009 "ruling was explicitly premised on its factual finding that the proposed house would be on a 'footprint' larger and at a different location than that of the existing mobile home." (Id., p. 8.)

Second, Mr. Wells arrived at a market value opinion for the "unimproved" lot based on three land sales. The appraisal contains some very cursory information regarding the sales, but it does not contain any qualitative or quantitative analysis showing how he arrived at his market

[3] According to the Uniform Standards of Professional Appraisal Practice ("USPAP"), an appraiser who uses an extraordinary assumption should clearly state the assumption and notify the reader that if the assumption is proven to be false, it could alter the appraiser's opinions or conclusions. (USPAP, p. U-3.)

value conclusion. There is not enough information in the Wells Appraisal to allow either the board or the Town, for that matter, to determine how these three sales actually compare to the Property and what adjustments are appropriate. The "analyses" of the manufactured home sales and the single-family sales are similarly flawed. For example, there is undisputed evidence that one of the manufactured homes located on the Property is uninhabitable due to its condition, but Mr. Wells gave a $68,000 market value estimate for each of the three manufactured homes, apparently giving no consideration to the condition of each and how, if at all, the condition impacts market value.

The Taxpayers did not call Mr. Wells as a witness. He was therefore unavailable to address the concerns and questions raised by the Town and the board regarding his appraisal. His questionable assumptions and methodology did not help the Taxpayers meet their burden of proof.

In summary, the board does not agree with the assumption (reflected in the Wells Appraisal) and the Taxpayers' presentation that the Property should be valued for tax assessment purposes simply as if it consisted of undevelopable vacant land. The evidence presented reflects the Property has been developed with four residential structures which can continue to be used and there is no evidence to suggest the Town could or would deny a building permit to repair or replace those structures (on the same 'footprints') should the Taxpayers decide to do so. The board therefore finds their "bundle of rights" in the Property is much larger and more valuable than the estimate contained in the Wells Appraisal.

For all of these reasons, the board finds the Taxpayer failed to prove the ad valorem assessment on the Property was disproportional for tax year 2012. 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, Member

_____
Theresa M. Walker, Member

Addendum A

The "Requests" received from the Taxpayers 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 overly broad or narrow so 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.

REQUESTS FOR FINDINGS OF FACT

1. The Town of Richmond issued at least 8 building permits to subject property from at least 1966 to 1988 (see Building Permits Page 1 – 10 of Appraisal)

   Granted.

2. These building permits were for the construction of garages and buildings as well as for the placement of mobile homes upon subject property.

   Granted.

3. Town of Richmond taxes the subject property as well as the buildings, garages, and mobile homes built pursuant to the building permits.

   Granted.

4. Taxpayers purchased the subject property for $190,000 in 2006. (see Sales History – tax card)

   Granted.

5. Subject property has its sole frontage on Prospect Hill Rd, a private road.

   Granted.

6. The Town of Richmond assessed the value of the subject property at $185,450 up to tax year 2011. (see Tax Card)

   Neither granted nor denied.

7. On June 8th 2009, the Town of Richmond Board of Selectmen issued a decision per RSA 674:41 that no building permits would be issued for subject property due to its frontage on a private road. The Town of Richmond ZBA denied taxpayers' appeal of the decision on 8/17/2009.

   Denied.

8. Town of Richmond zoning ordinance §1003 requires building permits "prior to the erection, addition, alteration, relocation or conversion to apartments of any building or structure of portion thereof."

   Neither granted nor denied.

9. From tax year 2011 to 2012, the Town's assessors increased the assessed value of the subject property by 17% from $185,450 to $217,436.

   Granted.

10. Subsequently, the Town of Richmond abated the 2012 taxes to $196,703 – a 6% increase in assessment over 2011.

    Granted.

11. Town of Richmond classifies the best and highest use of 11.57 acres of subject property as "1F RES" and assesses it at $48,900.

    Neither granted nor denied.

12. Tax card describes primary structure as "ORIG HUNTING CAMP W/FLAT ROOF; WATER STAINS FROM ROOF LEAKS;" with the year built listed as 1960. The market value for this structure was increased from $104,420 with 28% depreciation in 2011 to $107,589 with 22% depreciation in 2012.

    Denied.

13. Town assessor determined that 1971 mobile home was functionally obsolete as a residential structure. (see Item #6, abetment recommendations)

    Granted.

14. The Town of Richmond assessor(s) have not taken into consideration the restriction on building permits when assessing the market value of the subject property.

    Denied.

REQUESTS FOR RULINGS OF LAW

1. Assessments of real estate must be based on market value. In valuing property, all real estate rights, tangible and intangible, are assessed. (see RSA 21:21(I))

   Granted.

2. The state of NH recognizes development rights (i.e. the right to construct buildings upon a property) as a property right.

   Granted.

3. Per RSA 75:1 the selectmen have to appraise a property's "full and true value" and consider such restrictions on the bundle of property rights as open space, conservation restrictions, easements, current use, etc…

   Granted.

4. Per RSA 79:2 timber has to be released from property tax.

   Neither granted nor denied.

5. The denial of building permits is a restriction upon the development rights of a property similar to those imposed by a conservation restriction (79-B:3), current use (79-A:5), discretionary easement (79-C:7), or discretionary preservation easements (79-D:7).

   Neither granted nor denied.

6. RSA 674:41 clearly states that "no building shall be erected on any lot within any part of the municipality nor shall a building permit be issued for the erection of a building" on a private road unless "the local governing body… has voted to authorize the issuance of building permits for the erection of buildings on said private road or portion thereof."

   Neither granted nor denied.

7. The Town is barred by estoppel from taxing a property right which they themselves have restricted.

   Neither granted nor denied.

8. A property's highest and best use must be one that is legally permissible.

   Granted.

9. Per Town of Richmond Ordinance §1003 a building permit would be required to relocate, replace, modify, alter or build an addition to any of the existing structures on subject property.

   Neither granted nor denied.

10. Per Town of Richmond Ordinance §1003 a building permit would be required to build any new structure on subject property.

    Neither granted nor denied.

11. In determining market value, land and buildings are should be assessed together as a whole.

    Granted.

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Nicolas and Jill Bosonetto, 71 Prospect Hill Road, Richmond, NH 03470, Taxpayers; Chairman, Board of Selectmen, Town of Richmond, 105 Old Homestead Highway, Richmond, NH 03470; and Mark Stetson, Avitar Associates of New England, Inc., 150 Suncook Valley Highway, Chichester, NH 03258, Contracted Assessing Firm.

Date: 8/29/14

_____
Anne M. Stelmach, Clerk