

Weldon E. Barton and Ella M. Barton

v.

Town of Newport

Docket No. 4465-88

DECISION

A hearing in this appeal was held, as scheduled, on December 14, 1989. The Taxpayers were represented by Michael C. Shklar, Esquire and Peter Gillings, Realtor. The Town was represented by George W. Hildum, Senior Appraiser, Avitar. Neither party challenged the Department of Revenue Administration's assessment-sales ratio of 100% for the 1988 tax year for the Town of Newport. Based on that ratio the Taxpayers' assessment equates to a market value of \$93,300, as of April 1, 1988.

The Taxpayers appeal, pursuant to RSA 76:16-a, the assessment of \$93,300 (land, \$61,400; building, \$31,900) placed on their real estate, located on Route 103 and 11 for the 1988 tax year. The subject property consists of a one story frame dwelling with attached garage and 2.9 acres of land fronting on Route 103 and 11 and bounded on the west by Endicott Road.

The Taxpayer testified the subject property was used for residential purposes and the land was not suitable for subdivision for commercial purposes.

The Taxpayer testified Endicott Road was a gravel road which limited the corner commercial appeal of the subject property. The Taxpayer also stated the subject land was ledgy and wet and would be difficult to develop for commercial purposes. Mr. Gillings testified in his opinion as a developer and Realtor in the Newport area that the subject property would not be developed for commercial purposes. Mr. Gillings also testified his real estate brokerage company sold the property to the Taxpayer in 1982.

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Mr. Hildum argued for the Town the subject property was a residential property in a commercial zone and that the zone had been created by a change in the zoning ordinance in November of 1987. Mr. Hildum stated his opinion was that the highest and best use of the subject property was as commercial property and that the assessment had recognized a residential use of the property. The Assessor also made reference to RSA 75:11, which provides a Taxpayer the opportunity to request that a property used for residential purposes located in a commercial zone be assessed at its current use as a residential property.

Mr. Hildum stated the zoning in the Kellyville District, in which the subject property is located, would enable the owner to create three commercial lots, with 100 feet of frontage for each lot.

The Taxpayer rebutted by stating the subject property could not appropriately be subdivided and was thus valued disproportionately high by the Town.

The Board finds the subject property is in a commercial zone in the Town of Newport and is being used as the primary residence of the Taxpayer owners. The Board finds the condition attributed to the corner location increases the development potential at a factor of 20%, resulting in a land assessment of \$59,650. The Board finds the buildings were properly assessed and the total assessment of the subject property for 1988 should be \$91,550.

The Board therefore rules the proper assessment for the subject property is

Land	\$59,650
Building	<u>\$31,900</u>
Total	\$91,550

If the taxes have been paid, the amount paid on the value in excess of \$91,550 is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Esq., Chairman

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George Twigg, III, Member

Peter J. Donahue, Member

(Mr. Franklin did not sit.)

Paul B. Franklin, Member

Date: January 18, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Michael C. Shklar, Esq., counsel for Weldon E. & Ella M. Barton, taxpayers; and the Chairman, Selectmen of Newport.

Michele E. LeBrun, Clerk

Date: January 18, 1990

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v.
Town of Newport

Docket No. 4465-88

ORDER RE MOTION FOR REHEARING

By motion dated January 30, 1990, and received February 5, 1990, the Taxpayers requested a rehearing with respect to the decision of the Board in the above entitled case dated January 18, 1990. The Town filed an objection dated February 13, 1990, and received on February 14, 1990.

The Board denies the request for rehearing for the following reasons:

1. The Taxpayers did not offer to present any evidence that existed but was unavailable at the time of the original hearing. See New Hampshire Code of Administrative Rules Tax 201.05 (d).
2. The Board did not find the parcel to be subdividable.
3. The Board was unable to determine what the Village Design District Kellyville zone allowed in regard to the subject property.

The order is, therefore:

Motion for rehearing denied.

March 29, 1990

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Anne S. Richmond, Chairman

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within order have been mailed this date, postage prepaid, to Michael C. Shklar, Esq., counsel for the Taxpayers, and to the Chairman, Board of Selectmen, Town of Newport.

Michele E. Brun, Clerk

March 29, 1990