

William E. Gilmore, Paul Holloway and Douglas Stockbridge

v.

Town of Conway

Docket No. 5076-88

DECISION

At a hearing held on November 16, 1990, the Taxpayers appealed their 1988 assessment, pursuant to RSA 76:16-a, on two separately assessed parcels: Map 11, Lot 57-1 assessed at \$420,240 (land only) and Map 11, Lot 57-2 assessed at \$1,733,950 (land, \$410,730; building, \$1,323,220).

Map 11, Lot 57-1 consists of an unimproved 8.26 acre parcel with frontage on Route 302. Map 11, Lot 57-2 consists of 18.95 acres (6.84 acres assessed ad valorem and 12.11 acres assessed in current use) fronting on Route 16 and improved with an 85 bed nursing/congregate care facility known as Clipper Home of North Conway.

The Taxpayers were represented by William J. Donovan, Esq., James P. Reidy, Esq. and Russell W. Thibeault, appraiser.

The Town was not represented at the hearing. James Fennessy, Assessor, submitted the following letter on November 13, 1990 in support of the Town's assessments.

"Concerning Parcel #1 which is 8.24 acres transferred in 1990 to Douglas Stockbridge, there has been a reduction in value to \$794,400. This has been offered on the market at different times for as high as \$1.2 million. After a meeting with Mr. Stockbridge in August, it was granted this reduction.

As concerns Parcel #2 containing the nursing home, certainly the total amount of land (approximately 27 acres) was purchased in 1987 for \$875,000. It was subdivided into the two parcels, including the aforementioned Parcel #1 and, due to a special exception, a nursing home was allowed to be built in a

residential zone with a trade off of a portion of its commercial property to allow Parcel #1 to be considered commercial which, in my opinion, drastically changes the worth of both properties as at this time it is the one and only nursing home granted a license to be built in Conway.

From what I can gather, these nursing homes are normally at the present time bought and sold on the market by the number of units or the number of beds and, in my opinion, this particular nursing home meets the classification of \$40,000 to \$48,000 per bed criteria.

Because of its proximity to Route 16 in Conway, which is very well known to have a very high value as far as commercial property is concerned, I am basing my opinion of per unit value on the fact that a patient cost of \$40,000 to \$45,000 per year, if not on Medicare, etc., would seem to conclude the higher end of the spectrum for this type of convalescent care."

The Taxpayers argued, based upon an appraisal by Russell Thibeault, that the proper 1988 assessed values for parcels 57-1 and 57-2 were \$116,000 and \$1,050,000 respectively.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a, Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

As to parcel 57-1, the Board places no weight on the Taxpayer's appraisal of this parcel as it was done with the appraiser's misunderstanding that the parcel could not be permitted for business uses. "Although zoned for commercial uses, the Conway ZBA restricted uses to residential/agricultural in granting a variance for the nursing home on Clipper's adjacent parcel" (Exhibit TP-1, Pg. 4). The ZBA's granted "proposed finding/order" shows the opposite. All of parcel 57-1 received a variance so that it could be permitted for business uses while all of parcel 57-2 was restricted to uses found only in the Residential/Agricultural District of which a nursing home was one of the conditional uses.

The Board finds that the 1989 100% assessed value, as adjusted to \$794,400, is the best evidence of market value. The Board finds that the 1988

equalization

factor of 40% as determined by the Department of Revenue Administration reasonably adjusts this market value to a proper 1988 assessed value of \$317,760.

As to parcel 57-2, the Board finds that, due to 12.11 acres being in current use, the market value of the area (6.84 acres) not in current use needs to be estimated, not the entire 18.95 acres, as the Taxpayers appraiser has done. The Board rules that the 6.84 acres, whose topographic difficulties have been minimized by a good access road, have a contributory market value to the whole property of \$684,000. Further, the Board rules that the Taxpayer's replacement cost estimate of \$2,310,000 for the improvements is more reasonable than the Town's equalized assessment of \$3,308,050 for the improvements given the fact that the actual construction costs of the facility on the steep site was 2.5 million dollars during 1987 and 1988.

The Board therefore rules that the proper 1988 assessed value for parcel 57-2 is summarized as follows:

<u>Land</u>		
6.84 acres x 100,000/acre x .40 (equal. ratio)	=	
\$273,600		
12.11 acres in current use	=	
330		
 <u>Improvements</u>		
2,310,000 x .40 (equal. ratio)	=	<u>924,000</u>
	Total value	
\$1,197,930		

If the taxes have been paid, the amount paid on the value in excess of \$317,760 for Parcel 57-1 and \$1,197,930 for Parcel 57-2 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

George Twigg, III, Chairman

Peter J. Donahue, Member

Paul B. Franklin, Member

Date: January 7, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to William J. Donovan, Esq., counsel for the taxpayers; and Chairman, Selectmen of Conway.

Michele E. LeBrun, Clerk

Date: January 7, 1991

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