

Richard E. Anderson and Margaret N. Anderson

v.

Town of New London

Docket No. 5481-88

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1988 assessments of \$135,600 (land, \$82,000, buildings, \$55,400) for Map 35, Lot 49, and \$64,500 (land only) for Map 35, Lot 51 (the Property). For the reasons stated below, the appeal for abatement is denied.

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). We find the Taxpayers failed to carry their burden and prove any disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Town, from 1977 to 1987, had appraised the two lots as one parcel, but since the revaluation in 1988 had appraised them as separate lots, thereby resulting in a higher value than if considered as one parcel;
- 2) the two lots had been described and acquired by one deed;
- 3) the Taxpayers had received only one share of stock in the private Slope'n Shore Club Corporation and had been assessed only one annual

assessment in support of the corporation since purchase of the property in 1977; and

4) the property had been developed and the septic system designed with the intent of the two lots being one parcel.

The Town argued the assessment was proper because:

1) two legal lots of record, as described on a signed and recorded subdivision plat, had been transferred to the Andersons in 1977; and

2) the Taxpayers had discussed legal annexation of the two lots with the planning board but had not gone ahead with the process.

The first issue is, should these two abutting lots be assessed as one estate or two separable estates. The second issue follows then as to what is the proper valuation.

On the first question, RSA 75:9 controls as to how the two lots should be viewed for taxing purposes only.

RSA 75:9 provides: "Whenever it shall appear to the selectmen or assessors that two or more tracts of land which do not adjoin or are situated so as to become separate estates have the same owner, they shall appraise and describe each tract separately and cause such appraisal and description to appear in their inventory." Under this provision two or more tracts having the same owner must be appraised and described separately if they "do not adjoin" or if they "are situated so as to become separate estates." Whether two or more adjoining tracts "are situated so as to become separate estates" is a matter to be determined from all the facts and circumstances of each case. 3 T.Cooley, Law of

Taxation Section 1068 (4th ed. 1924); Annot., 133 A.L.R. 524, 538 (1941). "There is no hard and fast rule that can be applied universally to guide assessors in determining whether parcels of land are to be assessed separately or together. . . . [N]o single factor is decisive of the issue." Lenox v. Oglesby, 311 Mass. 269, 271, 41 N.E.2d 45, 46-47 (1942). Fearon v. Town of Amherst, 116 N.H. 392, 393, 394 (1976).

In this case, the board must weigh and balance the facts on this issue.

On the Taxpayers' side, 1) it is clearly the intent of the Taxpayers to consider the two lots as one estate; 2) the lots have since subdivision been deeded together, although separately numbered and described; 3) the private corporation which maintains the common services of the development have deemed the two lots one entity for stock ownership and assessment purposes; 4) there exists one water hook-up for the two lots; and 5) a slight portion of the drive crosses the lot lines.

On the Town's side, 1) the lots have been and remain separate lots of record according to the Town's subdivision and zoning ordinances, and therefore could be transferred separately; 2) it is the Town's opinion, and there was no evidence submitted to the contrary, the unimproved lot, despite some soils and topography difficulties, could receive a septic permit from the state and could be built on; 3) Lot 49 has not been physically improved in such a way as to encumber or prevent the development of Lot 51 separately. All setback requirements of public and private entities have been met, and the slight encroachment of the drive does not preclude the full development of Lot 51; and 4) there was no evidence that a separate water hook-up could not be obtained for Lot 51 and that the private corporation would not issue an additional share and collect an additional annual assessment for Lot 51.

On balance and despite the Taxpayers' honest intentions, the board rules the two lots retain enough aspects of severability and utility to be assessed as separate estates for the 1988 tax year.

As to the second issue, the board finds no probative evidence was submitted by the Taxpayers to prove that the combined assessments of the two

lots (\$200,100) exceeds their market value and the Taxpayers' proportional share of the tax burden. We also find the Town supported the Property's assessment.

SO ORDERED.

July 22, 1991

BOARD OF TAX AND LAND APPEALS

—

George Twigg, III, Chairman

Paul B. Franklin

Michele E. LeBrun

I certify that copies of the above decision have been mailed this date, postage prepaid, to Richard E. and Margaret N. Anderson, the Taxpayers, and to the Chairman, Board of Selectmen, Town of New London.

July 22, 1991

Brenda L. Tibbetts, Clerk