

Thaddeus Paul Zimny

v.

Town of Newport

Docket No. 5704-88

DECISION

A hearing in this appeal was held, as scheduled, on September 6, 1990. The Taxpayer represented himself. The Town was represented by George W. Hildum, senior appraiser for Avitar.

The Taxpayer appeals, pursuant to RSA 76:16-a, the three 1988 assessments placed on his property: Map 84, Lot 1760-01, \$40,100 (land only); Map 84, Lot 1760, \$274,800 (land, \$118,800; buildings, \$156,000); Map 43, Lot 967, \$102,200 (land, \$34,200; buildings, \$68,000). Map 84, Lot 1760-01 is a 5 acre tract of unimproved land on East Mountain Road contiguous separately subdivided from but contiguous to Map 84, Lot 1760. Map 84, Lot 760 is a 70.60 acre parcel with an occupied ranch house, a vacant older dwelling, two garage structures and a two-story barn all located on East Mountain Road. Map 43, Lot 967 is a .367 lot located on Belknap Ave with a one-story office building.

Neither party challenged the Department of Revenue Administration's equalization ratio of 100% for the 1988 tax year for the Town of Newport.

Map 84, Lot 1760-01

Mr. Zimny argued that the lot could not get a percolation test and that New England Electric wires ran along its frontage.

Mr. Hildum stated that the lot appeared level and buildable and that the Town's policy was to appraise such a lot as buildable unless the owner could provide proof of it not being capable of sustaining a septic system. He felt the assessment was in line with sales of lots of comparable location and utility.

Map 84, Lot 1760

Mr. Zimny stated that much of the parcel was ledgy or had shallow soil. He testified that the old house had been vacant since he purchased the property 10 years ago, and that due to part of it being an old school house, low posted and partially gutted in 1988, he had been unable to locate anyone to remove it after he built the new house seven years ago.

Mr. Hildum stated that the three acres cleared and utilized as a homesite had an excellent view with the balance of the acreage appearing to be typical forest land. He argued that the old house had value as it could have been sold separately from the other buildings on its own lot of land to be then renovated as a dwelling.

Map 43, Lot 967

Mr. Zimny stated that the ground level of the building flooded seasonally and that the sump pump ran whenever it rained. He also stated that the property was in a mixed neighborhood with properties on the north side of Belknap Ave. not being in the light commercial zone, but with several having obtained some special exceptions to operate commercial ventures.

Mr. Hildum argued the flooding problem affected only the basement area of the building on a seasonal basis and that a 5% adjustment on the entire structure adequately accounted for the problem. He argued that the property was located in a light commercial zoning district and its present use as a dentist office could be considered a highest and best use of the property.

The Board rules as follows.

The Taxpayer's appeal is based on the Constitution of New Hampshire, Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time, . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp.) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in

money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R. R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

Map 84, Lot 1760-01

The Board finds that the Taxpayer did not meet his burden of proof in documenting how and why the lot was unbuildable as he claimed. It is the Board's experience that a failed percolation tested does not necessarily preclude eventual development or use of a property. Therefore the Board rules the 1988 assessment proper.

Map 84, Lot 1760

The Board finds that the land's attributes (view) and its liabilities (topography and utility easements) are properly accounted for in the Town's assessment.

The Board finds that the mere fact the Taxpayer had the old house burned down in 1989 does not prove that it had no or little contributory value in 1988. The Board finds that the highest and best use of the old dwelling (while not the taxpayer's desire) would have been to sell the house with a separate parcel of land. The Board rules however that its proper contributory value based on its utility and condition is \$12,050 (\$60,223 town's rep. cost - 80% depreciation).

Further, the Board rules that the larger garage and barn should be further reduced an additional 20% and 30% respectively based on their reduced utility and contributory value due to their distance from the house and due to the multiple out buildings of this nature on one lot. The Board rules that their proper assessed values should be \$10,300 and \$10,150.

In summary the proper 1988 assessment for this parcel is \$256,400 (land, \$118,800; buildings, \$137,600).

Map 43, Lot 967

The Board finds that the Town properly adjusted the entire building value by 5% for the water damage in the basement. The Board finds no evidence to prove that the Town's assessment of \$102,200 was not reasonable for this office building in a neighborhood of mixed commercial and residential uses.

Therefore the Board finds the proper 1988 assessments are as follows:

Map 84, Lot 1760-01	\$ 40,100
Map 84, Lot 1760	\$256,400
Map 43, Lot 967	<u>\$102,200</u>
Total	\$398,700

If the taxes have been paid, the amount paid on the value in excess of \$398,700 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

Paul B. Franklin, Member

Ignatius MacLellan, Member

Date: October 8, 1990

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Thaddeus Paul Zimny, taxpayer; and Chairman, Selectmen of Newport.

Michele E. LeBrun, Clerk

Date: October 8, 1990