

Lynwood J. and Lillian M. Babbitt

v.

Town of Charlestown

Docket No.: 6389-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$94,750 (land, \$17,000; buildings, \$77,750) on their real estate on Almar Street, identified as Map 33, Lot 12, consisting of a 2400 square foot garage and three above-ground 10,000 gallon fuel storage tanks on a .66 acre lot (the Property). The Town failed to appear, but consistent with our Rule, TAX 102.03(g), the Town was not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is granted.

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 carried this burden and proved disproportionality.

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 2

The Taxpayers argued the assessment was excessive because:

- (1) they were assessed \$13,500 for their fuel storage tanks while other similar tanks in Town were not assessed;
- (2) the tanks are 20 years old and were formerly buried;
- (3) the Town appraised the garage as a commercial building while the Taxpayers obtained a permit to operate a plumbing and heating business out of their personal garage;
- (4) the garage cost only \$35,000 to construct in 1988 while the Town has it appraised at \$64,250; and
- (5) they were charged twice for a water and sewer hookup - once for the garage and once for their manufactured home.

The Town submitted copies of the assessment records cards.

The board finds and rules as follows.

- 1) The fuel storage tanks are taxable as real estate but that the Town's assessment is in excess of the tanks' contributory value.

RSA 72.6 states: **"Real Estate.** All real estate, whether improved or unimproved, shall be taxed except as otherwise provided."

RSA 21:21 states:

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate."

Where the exclusive use of improvements is "intimately intertwined with the

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 3

primary use of the land itself" the improvements are taxable, whether directly attached to the land or not. See King Ridge, Inc. v. Sutton, 115 N.H. 294,

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 4

299 (1975), Lin-wood Dev. Corp. v. Lincoln, 117 N.H. 709, 710-711 (1977).

"When property is appraised, all factors relevant to its value should be considered, Paras v. Portsmouth, 115 N.H. at 67-68, 335 A.2d at 308, including special architectural features and equipment. Although it may be difficult to estimate, the special features and equipment have some market value. '[T]o hold there is no market value . . . would mean that valuable property would entirely escape its just share of the burden of taxation.' Public Service Co. v. New Hampton, 101 N.H. 142, 146, 136 A.2d 591, 595 (1957)." 590 Realty Co., Ltd. v. City of Keene, 122 N.H. 284, 286 (1982).

The Taxpayers testified that the site was specially adapted to hold the tanks. A clay dike surrounded the tanks to contain fuel in the event of a spill and the tanks set on gravel cradles. Further, the Taxpayers obtained a zoning permit and site plan approval to operate this business. Collectively, these physical adaptations, the sheer size of the tanks and the regulatory permitting process all lead to the conclusion that the improvements are "intimately intertwined with the primary use of the land."

The mere fact that other similar tanks were not assessed does not support the argument that the Taxpayers should also escape taxation. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 5

As to their value, the board finds that due to their age and due to their small size relative to what is standard for most fuel delivery businesses, the Town's replacement cost of \$15,000 should be adjusted by 40

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 6

percent physical depreciation and 40 percent functional depreciation for a proper value of \$5,400.

2) The square foot price for the garage of 27.05 as used by the Town is unsubstantiated on the assessment record card and appears excessive based on the evidence and generally accepted replacement cost manuals.

The Taxpayers' cost of \$35,000 to construct in 1988, while given some weight, is also not conclusive evidence as to the garage's contributory value to the property as a whole. Rather, the following calculation of its replacement cost and value using the 1988 Marshall Valuation Service is the best estimate of its market value. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

Base square foot average frame storage garage 20.94

-lack of heat in 2,211 square feet - .89
20.05
-10 foot story height factor x.921
-area to perimeter multiplierx1.252
-local and current cost multiplier1.00

23.12

Area2400

\$55,500

Minus slab in 900 square feet-2,000

\$53,500

-1 percent physical depreciation x.99

-10 percent functional depreciation x.90

(configuration, low cost siding,
varying roof lines) \$47,650

3) The board finds no double assessment for water and sewer hook-ups for the 1989 tax year. As testified to by the Taxpayers, their manufactured home was not on the Property on April 1, 1989 and thus it and any attendant water and sewer hook-ups are not part of this appeal. The board has jurisdiction only on those properties properly appealed to it. (See Appeal of

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 7

Town of Sunapee, 126 N.H. 214, (1985)).

Lynwood J. and Lillian M. Babbitt

v. Town of Charlestown

Docket No.: 6389-89

Page 8

In the spirit of judicial efficiency, however, the board cannot discern from the subsequent years' property assessment records submitted any double assessment for water and sewer.

Thus, in summary we find the correct assessment to be:
Land \$17,000
Garage 47,650
Tanks 5,400
\$70,050

If the taxes have been paid, the amount paid on the value in excess of \$70,050 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Lynwood J. and Lillian M. Babbitt, Taxpayers; and Chairman, Selectmen of Charlestown.

Dated: July 20, 1992

Valerie B. Lanigan, Clerk

0007