

**Joseph E. Messer**  
**v.**  
**Town of New London**

**Docket Nos. 6852-89 & 8701-90**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the Town's 1989 assessments of the following:

Map 129, Lot 11 - \$ 39,700 (land only)  
Map 129, Lot 11A - \$101,700 (land - \$46,600; buildings - \$55,100)  
Map 129, Lot 12 - \$ 50,100 (land only)  
Map 139, Lot 4 - \$217,000 (land - \$71,500; buildings - \$146,400)

and the 1990 assessments of the following:

Map 129, Lot 11 - \$ 39,700 (land only)  
Map 129, Lot 11A - \$101,700 (land - \$46,600; buildings - \$55,100)  
Map 129, Lot 12 - \$ 50,100 (land only)  
Map 139, Lot 4 - \$205,800 (land - \$71,500; buildings - \$134,300)

(the Property).

Map 129, Lot 11 consists of 41,800 square feet of land located on King Hill Road.

Map 129, Lot 11A consists of a shop on a 23,550 square foot lot located on King Hill Road. This lot is contiguous to Lot 11.

Map 129, Lot 12 consists of 3.5 acres of land located on Bog Road.

Map 139, Lot 4 consists of a Victorian house on a 28,850 square foot lot located on Stone House Road.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried this

burden and proved he was disproportionately taxed.

The Taxpayer argued:

Map 129, Lot 11

- (1) the land is wet;
- (2) it would never meet setback requirements; and
- (3) it is a corner lot and has an open ditch right through it.

Map 129, Lot 11A

- (1) it is a small lot;
- (2) the property line runs 40 feet in front of the building and there is not enough room to turn a car around in the front;
- (3) the adjoining lot (Lot 11) which is taxed separately is extremely wet;
- (4) the building is only a shell with no insulation and a cement floor;
- (5) an appraisal prepared by Capital Appraisal Associates estimated the fair market value as of July 20, 1989, to be \$90,000; and
- (6) the Taxpayer's opinion of value is closer to \$80,000.

Map 129, Lot 12

- (1) one-third of the backland is wet; and
- (2) it is not a good buildable lot.

Map 139, Lot 4

- (1) the lot is small; is an old lot of record and could not be built on by today's standards;
- (2) the house is in bad condition needing paint and repair;
- (3) the house has poor insulation, the roof leaks, the porch is rotten and there is water in the cellar;
- (4) the well is on the next door property and the septic system is on a neighbor's property across the street;
- (5) an appraisal prepared by Raymond Woodhouse, CRA, estimated the fair market value as of June 20, 1989 to be \$129,000;
- (6) an appraisal prepared by Robert Hill of Capital Appraisal Associates estimated the fair market value as of July 20, 1989 to be \$133,000; and
- (7) the Taxpayer's opinion of value is around \$100,000.

The Town argued:

Map 129, Lot 11

- (1) a condition factor was applied to reflect the fact that this is a vacant lot;
- (2) the lot could be sold as an individual residential lot and a building and

septic system could be installed on the property; and

(2) the lot could be sold as an individual residential lot and a building and septic system could be installed on the property; and

(3) sand and gravel is stored on the lot.

Map 129, Lot 11A

(1) the lot is in a residential district with a commercial business;

(2) the land has been appraised as residential even though it is used commercially;

(3) the lot is integral with the abutting lot (Lot 11); and

(4) the property could be sold as a commercial property as long as the use remained the same.

Map 129, Lot 12

(1) the lot is a building lot;

(2) Bog Road is not one of the better areas in town but the Taxpayer has the privilege of putting the lot on the market; and

(3) the assessment is fair and to deviate from it would be an injustice to others.

Map 139, Lot 4

(1) the property has a commanding view of New London;

(2) the appraiser reduced the grade of the house from an average +10 to average which reduced the 1990 assessment of the building to \$134,300 for a total assessment of \$205,800;

(3) an assessment of \$205,800 for 1989 is recommended;

(4) if the house was torn down, a new building could be built on the lot; and

(5) a 20 percent discount of the land value for the shared water line would be justifiable.

The board's inspector inspected the property, reviewed the property tax cards and filed a report with the board. This report concluded adjustments should be made to Map 129, Lot 11 for the culvert and water running through the property, and adjustments for age and condition of the Victorian home on Map 139, Lot 4. The inspector recommended no change in values to Map 129, Lot 11A and Map 129, Lot 12.

Based on the evidence, including the board inspector's report, we find the correct assessments for 1989 and 1990 should be:

Map 129, Lot 11 - \$ 29,850  
Map 129, Lot 11A - \$101,700 (land - \$46,600; buildings - \$55,100)  
Map 129, Lot 12 - \$ 50,100  
Map 139, Lot 4 - \$181,600 (land - \$71,500; buildings - \$110,100)

These assessments are ordered because:

Map 129, Lot 11 - The board questions whether this lot is more valuable to support the non-conforming commercial garage on Lot 11A or as a potential building lot. If its highest and best use is a potential building lot, the board foresees problems caused by the culvert which would increase the site costs to develop. Based on the evidence, the lot needs more depreciation and the board has applied a 40 percent reduction for the condition of the property.

Map 129, Lot 11A - The Taxpayer failed to prove that the assessment was in excess of market value or that it was disproportionate.

Map 129, Lot 12 - The Taxpayer failed to prove that the assessment was in excess of market value or that it was disproportionate.

Map 139, Lot 4 - Based on the evidence, the building needs more depreciation; a 40 percent physical depreciation factor and a 15 percent functional depreciation factor have been applied for the age and condition of the house.

If the taxes have been paid, the amount paid on the value in excess of \$363,250 for 1989 and \$363,250 for 1990 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

I certify the copies of the within Decision have this date been mailed, postage prepaid, to Joseph E. Messer, taxpayer; and the Chairman, Selectmen of New London.

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Melanie J. Ekstrom, Deputy Clerk

Date: March 4, 1992

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