

Iona White

v.

Town of Wentworth

Docket Nos.: 7135-89 and 11000-91

DECISION

The first issue was the matter of timely filing. After hearing the arguments, the board ruled the Taxpayer had timely filed for both the years 1989 and 1991. The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's"

1989 assessments of:

Tax Map and LotNo. of AcresLandBuildingTotal

13-1-313.2	\$ 88,300	\$ 88,300
13-4-563.8	81,400	81,400
13-3-169.4	161,800	161,800
13-2-510.8	69,200	69,200
13-1-227.3	72,700	72,700
13-5-518.2	\$104,050	\$53,500\$157,500

and the 1991 assessment for Map 13, lot 5-5 of \$84,400 (land, \$30,900; buildings, \$53,500) (the Property). The 1991 assessment included 16.2 acres in current use and was further reduced \$5,000 to \$79,400 for an elderly exemption. For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessments were 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 disproportionality.

The Taxpayer argued the assessments were excessive because the frontage to depth ratios (both road and river) of the subject unimproved lots create a disproportionate amount of frontage. In addition, the Taxpayer described

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negative topographical features, wetland flooding, intermittent gravel excavation.

The Town argued the assessments were proper because:

- (1) adjustments were made for undeveloped (25%), gravel road (5%), size and topography; and
- (2) the Property was viewed as six separate estates.

Board's Rulings

The board finds the correct 1989 assessments to be:

Tax Map and LotNo. of AcresLandBuildingTotal

13-1-313.2	\$ 27,950	\$ 27,950
13-4-563.8	42,500	42,500
13-3-169.4	97,000	97,000
13-2-510.8	41,400	41,400
13-1-227.3	49,800	49,800
13-5-518.2	<u>72,400</u>	<u>\$41,000</u>
	\$331,050	\$372,050

The board finds the correct 1991 assessment to be:

13-5-5	\$30,900	Land (2 acres ad valorem and 16.2 in current use)
	<u>41,000</u>	Building
	\$71,900	

These assessment are ordered because the board agrees with the Taxpayers' claim that more adjustment should be made for excess frontage, topography and the fact that the cost to improve roads, access to potential lots and the necessary legal and engineering expenses greatly impact the likelihood of development. Also, based on the evidence, the buildings warrant additional

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physical and functional depreciation for their poor condition and utility.

If the 1989 taxes have been paid, the amount paid on the value in excess of \$372,050 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Similarly, the amount of 1991 taxes paid on Map 13, Lot 5-5 in excess of \$71,900 shall be refunded with interest at six percent per annum from date paid to refund date.

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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 William A. Baker, Esq., Representative for the Taxpayer; and Chairman, Selectmen of Wentworth.

Dated: September 16, 1992

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayer's" motion to reconsider and supplement to motion to reconsider. The board has reconsidered its earlier order and has vacated that order. However, the issue of whether the Taxpayer complied with all filing requirements remains open and will be decided as the first issue once a hearing is scheduled. The Taxpayer should have at such hearing: (1) a copy of the petition alleged to have been filed, or a reason a copy could not be obtained (Motion paragraph 1.); and (2) the date of the meeting with the "Town." The Town shall similarly search its records for this information.

April 29, 1991

SO ORDERED.

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George Twigg, III, Chairman

Peter J. Donahue

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Ignatius MacLellan

I certify that copies of the within order have been mailed this date, postage prepaid, to C. Nicholas Burke, Esq., Counsel for the Taxpayer, and to the Chairman, Board of Selectmen, Town of Wentworth.

Michele E. LeBrun, Clerk

April 29, 1991

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