

Thaddeus E. Burr

v.

Town of Westmoreland

Docket No.: 7243-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of \$237,700 (land, \$212,500; buildings, \$25,200) on Map R7, Lot 40 - a 112 acre lot with a 1-story frame house; and of \$164,800 (land, \$162,200; buildings, \$2,600) on Map R7, Lot 43 - a 64 acre lot with a 1-story barn (the Property). 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:

- (1) an appraisal prepared by Richard D. Powers, Powers Appraisal, Inc., estimated the fair market value to be \$304,000 as of May 11, 1990;
- (2) an estimated 4 percent drop in land values occurred between April 1, 1989 and

May 11, 1990;

(3) there is a 20 X 40 foot old carriage shed on Lot 40 with a one room cottage with no heat, no insulation, no toilet facilities, no well, and a gravity fed spring;

(4) Lot 43 has a barn which is in a dilapidated condition, the foundation has crumbled and needs renovations to be useable;

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- (5) the road frontage has topographical problems, is very ledgy and wet;
- (6) two parcels have subsequently sold -- the Burt lot (46-1/4 acres) on Lot 43 sold in December, 1991 for \$56,000 and the Crary lot (18.4 acres) on Lot 43 sold in May, 1992 for \$50,000;
- (7) taxes have increased considerably since 1982; and
- (8) the fair market value as of April 1, 1989 of Lot 40 is \$180,000 and of Lot 43 is \$124,000.

The Town argued the assessments were proper because:

- (1) the revaluation in 1989 by AVITAR estimated the values and all land values have gone up;
- (2) comparable abutting properties indicate the subject is not overassessed;
- (3) the Property has subdivision potential;
- (4) the Town was consistent in valuing building lots at \$8,000 and \$2,500 for the back acres; and
- (5) the assessments are proper.

Board's Rulings

A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property. Increases from past assessments are not

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evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985).

Based on the evidence, we find the correct assessments should be:

Lot 40 - \$226,700 (Land \$201,500; Buildings \$25,200) and

Lot 43 - \$153,800 (Land \$151,200; Buildings \$2,600).

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These assessments are ordered because the board finds the condition factor on the land should be 1.00 based on the testimony of the Taxpayer with respect to topography, less than necessary frontage for subdivision in certain instances and possible setback problems with respect to developing the 1,800 foot frontage along Spofford Road. The board's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

The Taxpayer's appraisal report prepared by Powers Appraisal, Inc. had, as its stated purpose, assumed that the land is already divided among family members and does not reduce the value by the cost to subdivide, etc. and should be considered as a hypothetical appraisal based on a "what if" situation. Further, the appraiser states in his report, "The secondary part of this assignment is to help divide the land into equal parts of 1/5, 1/5 and 3/5 in approximately the locations as shown on the attached map. This is so the owners can share the property fairly, but still obtain, for the most part the sections they are most interested in.". Given the foregoing statement, the relevance of the appraiser's value conclusions are questionable with respect to their relevance to proportionality and equity between other taxpayers with similar type property.

If the taxes have been paid, the amount paid on the value in excess of \$380,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

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BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thaddeus E. Burr, Taxpayer; and Chairman, Selectmen of Westmoreland.

Dated: October 5, 1992

Melanie J. Ekstrom, Deputy Clerk

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