

James H. Hancock and Judith E. Hancock

v.

Town of Fitzwilliam

Docket No. 7437-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$243,900 (land, \$55,250; buildings, \$188,650) on their real estate identified as Map 15, Lot 52 consisting of a colonial dwelling and sheep barn on 35.9 acres on Jaffrey Road, of which 33.9 acres are assessed in current use and two acres at ad valorem (the Property). The Taxpayers own four other parcels that were not appealed. 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 they were disproportionally taxed.

The Taxpayers argued the value on the buildings was excessive because:

- 1) the house was graded a class 5;
- 2) based on comparables and its quality of finish and physical condition, the house should be graded a class 4;
- 3) the house should be depreciated 35 percent for its physical condition as it was prior to the revaluation to correctly reflect the problems with the physical structure of the house;
- 4) the poor layout and utility of the ell and the capped only insulation are examples of functional depreciation not accounted for in the Town's assessment; and

5) the sheep shed was not depreciated as much as it was prior to the revaluation.

The Taxpayer also submitted an appraisal by Armand Paquette that estimated the market value of the Property at \$250,000.

The Taxpayers further argued that the Town had incorrectly assessed all of the two acres that were not in current use with the house on Lot 52. One acre should have been assessed with the barn across the road on Lot 53.

The Town argued the assessment was proper because:

1) the grade and depreciation of the house was consistent with several comparables submitted by the Town;

2) the Taxpayer had never filed a revised current use map delineating where the two acres not in current use were located; and

3) even if one acre of land not in current use was assessed with the barn (Lot 53), the Taxpayers' total value would not change, it would just be divided differently between Lots 52 and 53.

The Board rules as follows:

Current Use issue:

Lot 52 is overassessed by the value of one acre not in current use, while Lot 53 is underassessed by the value of one acre not in current use. While Lot 53 was not appealed by the Taxpayer, the Board has the authority when determining if Lot 53 (the Property appealed) is properly valued to look at the value of property not appealed. Appeal of Town of Sunapee 126 N.H., 214, (1985) (taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of his property is disproportionately excessive). Consequently, the Taxpayers' argument of excessive assessment on Lot 52, based on the issue of the land in current use, fails.

Since the Taxpayers have never filed a map with the Town that adequately defines the two acres not in current use, the Board orders the Taxpayer submit such a map to the Town with a copy to this Board in conformance with Rev 1202.01 (copy attached), within 30 days from the date of this decision.

This map shall show the dimension of the two acres around the buildings and the yards and grounds maintained in the routine use of the Property. The location of these two acres shall be referenced to fixed points on the ground

(e.g. road, stonewalls, drives, buildings, trees, etc.) so that there will be no misunderstanding in future tax years where the two acres are. The Town shall correct its assessment records based upon this map starting in the 1992 tax year.

Valuation

Based upon the evidence, including the Board's inspector's report, we find the correct assessment should be \$205,750 (land, \$55,250; buildings, \$150,000). This assessment is ordered because:

- 1) the evidence supports a higher physical depreciation of 30 percent;
- 2) while the house has many features to warrant the class 5 grade, there are items that are below grade or detract from its utility such as partial insulation, the poor ell layout and utility and some building components being below grade;
- 3) these items warrant a 15 percent functional depreciation, and;
- 4) no conclusive evidence was submitted to prove that the sheep shed assessment exceeds its contributory value.

If the taxes have been paid, the amount paid on the value for Lot 52 in excess of \$205,750 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

I certify that copies of the within Decision have this date been mailed, postage prepaid, to James H. & Judith E. Hancock, taxpayers; and the Chairman, Selectmen of Fitzwilliam.

Melanie J. Ekstrom, Deputy Clerk

Date: February 20, 1992

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