

Guy E. Sherman and Marie E. Sherman

v.

Town of Weare

Docket No. 7456-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of property located on Hatfield Road consisting of the following (the Property):

Map 402 Lot 74	Assessment \$65,800 (Land, \$5,300; Buildings \$60,500)
Map 402 Lot 67-15	Assessment \$4,700 (Land only)
Map 402 Lot 67-14	Assessment \$5,200 (Land only)
Map 402 Lot 67-13	Assessment \$7,500 (Land only)
Map 402 Lot 67-12	Assessment \$7,400 (Land only)
Map 402 Lot 67-11	Assessment \$7,600 (Land only)
Map 402 Lot 67-10	Assessment \$6,700 (Land only)
Map 402 Lot 67-9	Assessment \$4,200 (Land only)
Map 402 Lot 67-8	Assessment \$5,100 (Land only)
Map 402 Lot 67-7	Assessment \$5,600 (Land only)
Map 402 Lot 67-6	Assessment \$4,500 (Land only)
Map 402 Lot 67-5	Assessment \$3,200 (Land only)
Map 402 Lot 67-4	Assessment \$2,800 (Land only)
Map 402 Lot 67-3	Assessment \$2,600 (Land only)

The Taxpayers also own, but did not appeal, the following property:

Map 402 Lot 67	Assessment \$5,300 (Land only)
Map 402 Lot 67-1	Assessment \$5,250 (Land only)
Map 402 Lot 67-2	Assessment \$5,700 (Land only)
Map 402 Lot 67-16	Assessment \$2,400 (Land only)
Map 402 Lot 69	Assessment \$5,600 (Land only)
Map 402 Lot 71	Assessment \$5,400 (Land only)
Map 402 Lot 72	Assessment \$5,500 (Land only)
Map 402 Lot 79-1	Assessment \$5,800 (Land only)
Map 402 Lot 79-3	Assessment \$5,600 (Land only)
Map 402 Lot 79-4	Assessment \$5,600 (Land only)
Map 402 Lot 79-5	Assessment \$5,600 (Land only)
Map 402 Lot 79-6	Assessment \$5,700 (Land only)

Map 402 Lot 79-7 Assessment \$5,750 (Land only)  
Map 402 Lot 79-8 Assessment \$5,700 (Land only)  
Map 402 Lot 79-9 Assessment \$5,750 (Land only)

For the reasons stated below, the appeal for abatement is denied.

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 failed to carry their burden and prove any disproportionately.

The Taxpayers testified they owned fifteen lots in a paper subdivision, thirteen buildable lots and one house lot with building thereon. The application for abatement filed with this Board appealed the house lot with building and thirteen of the fifteen lots in the paper subdivision. Although Map 402, Lot 71 and Map 402, Lot 72 are part of the paper subdivision, these parcels were not listed on the application for abatement to the Board.

The Taxpayers argued that the fifteen lots were only on paper and had no access. The net assessed value for the fifteen lots is \$75,200 which is \$770 per acre. The Taxpayers compared their Property to a 222.09 acre parcel without subdivision approval owned by Nichols/Hammond assessed at \$57,000 or \$256 per acre. They testified they considered each lot individually and also compared them to LeBlond, Lot 17, assessed at \$5,650 for the land and sold in June, 1989, for \$163,500. Also, the Berry property, Lot 19, was assessed at \$6,050 for the land and the Rettig property, Lot 21, assessed at \$5,400 for the land. The Taxpayers argued the assessment for the total fifteen lot subdivision should be \$45,000 or \$460 per acre.

An appraisal of Lot 74 was introduced by the Taxpayer as evidence of its value. The property was appraised to obtain financing. Appraiser Michael Lee estimated the fair market value as of December 15, 1989 to be \$160,000. The property went on the market in November, 1987, and sold in January, 1990, for \$160,000.

The Town testified that the coefficient of dispersion of 36.49 for 1989 indicated the need for a revaluation. Vacant land was grossly underassessed

with

ratios between 15 and 20 percent. Improved property was assessed at 40 to 50 percent of value for 1989. The town argued that the sum assessed to the Taxpayers is not in excess of the Taxpayers share of the common tax burden. Seven properties were submitted as comparables indicating the price range of a typical residential building lot of between \$35,000 to \$40,000 as of April 1, 1989. The Town further argued that the most relevant comparison on the fifteen lot subdivision would be on a per lot basis because subdivision approval had already been granted. Estimated market value per lot is \$10,000. The Town argued that Nichols/Hammond 1989 assessment should not be compared because it was backland, had no access, and had not been through subdivision approval. The improved property, Lot 74, sold in December, 1989, for \$160,000. The Town considered it an arms-length transaction and indicative of its fair market value. The Town argued that the fair market value of the Taxpayers total assessment of all properties in the Town, when equalized, indicated the assessment is less than the equalized fair market value of the Taxpayers estate in the Town.

The board is not obligated or empowered to established a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the taxpayer[s] paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979); This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The Board finds the Taxpayers Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers Property. See Appeal of Michael D. Canata, Jr., 129 NH 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  
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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.

We find the Taxpayers failed to prove their assessment was disproportional. We also find the Town supported the Property's assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

Date: October 18, 1991

I certify that copies of the within Decision have this date been mailed, postage prepaid, to Guy & Marie Sherman, taxpayers; and the Chairman, Selectmen of Weare.

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Brenda L. Tibbetts, Clerk

Date: October 18, 1991

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