

Richard J. and Virginia H. Daschbach

v.

Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1989 assessments as follows: \$184,896 (land, \$51,596 (21 acres assessed in current use and 5 acres ad valorem); buildings, \$133,300) on R-7 Lot 34 and \$1,500 on R-7 Lot 10 (land only) and the 1990 assessments of \$176,096 (land, \$42,796 (21 acres assessed in current use and 5 acres ad valorem); buildings, \$108,800 on lot 34 and \$25 on lot 10 (assessed in current use) (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) interior dimensions of residence are incorrect. Appraiser's card, based on estimate, shows 5504 sq. ft. Actual measurement is 3508 sq. ft.

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 2

- (2) the assessment card lists the year built as 1900; the correct year is 1771, which should affect depreciation.
- (3) there is no heating system in second floor of house.
- (4) no fireplace in house is usable.
- (5) the use of 60 sq. ft. shed is very limited because of height limitations.
- (6) the shop shown on card as 864 sq. ft. is a 180 sq. ft. unheated room used for personal files; remainder of space is 679 sq. ft. barn.
- (7) road drainage water flows onto house lot and pasture in two places.
- (8) the fireplace in the partially insulated camp building is not usable and capped.
- (9) in 1990, the Town corrected several errors on their property cards and reduced taxable values of Lots R 7-34 and R 7-10; an abatement was made for 1990 but no abatement was made for 1989.

The Town at the hearing recommended a revised assessment on lot 34 of \$160,396 (land, \$51,596; buildings, \$108,800) and argued that lot 10 should be assessed for 1989 at \$25 in current use as it was in 1990.

The Town argued the revised assessments were proper because:

- (1) they made corrections to roof cover, story height, basement area and classification; and
- (2) they have inspected the wetness of the land with the road agent, and feel the Taxpayers could correct the situation. Therefore, the land value

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 3

stands as assessed.

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 4

### **Board's Rulings**

Based on the evidence, we find the correct 1989 and 1990 assessments should be \$151,596 (land, \$42,796; buildings, \$108,800) for lot 34 and \$25 for lot 10. This assessment is ordered because:

#### Lot 34

- 1) the original condition factor of 1.00 for the 2 acre site not in current use is reasonable based on the testimony and photographic evidence; this factor results in an assessed value of \$35,000 for the 2 acre site not in current use;
- 2) 21 additional acres are properly assessed in current use;
- 3) for the following reasons, the board has no jurisdiction under this present appeal to determine whether the remaining 3 acres, which the Town assessed at ad valorem, should be assessed in current use or not:
  - a) the Taxpayers applied in 1985 for current use assessment on all but 2 acres of land;
  - b) while it is unclear from the record whether the selectmen notified the Taxpayer of the denial of 3 acres from current use pursuant to RSA 79-A:5 (III), the Town assessed five acres of land at ad valorem;
  - c) RSA 79-A:9 requires the Taxpayer to appeal within 6 months the selectmen's denial in whole or in part of an application for current use;
  - d) the Taxpayer did not appeal the selectmen's action to the board; and

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 5

e)having determined by inquiry that the ad valorem assessment of the 3 acres was not an administrative error by the Town, the board does not have jurisdiction to rule upon this current use issue as part of an appeal brought under RSA 76:16-a (the Taxpayers always have the option in future years to apply for current use for the 3 acres under RSA 79-A:5 (II) and then appeal an unfavorable decision of the selectmen under RSA 79-A:9).

4)the Town's recommended revision of the building value to \$108,800 is reasonable and reflects many of the concerns raised by the Taxpayers.

Lot 10

This parcel was incorrectly assessed at ad valorem in 1989 and should be assessed for \$25 in current use.

If the taxes have been paid, the amount paid on the value in excess of \$151,621 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard J. and Virginia H. Daschbach, Taxpayers; and Chairman, Selectmen of Westmoreland.

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 6

Dated: November 23, 1992

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Valerie B. Lanigan, Clerk

0007

Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 7

**Richard J. and Virginia H. Daschbach**

**v.**

**Town of Westmoreland**

**Docket Nos.: 7602-89 and 10844-90**

**ORDER**

The Board of Tax and Land Appeals, having received a Town motion for reconsideration of its November 23, 1992 decision in the above captioned matter, hereby denies said motion for the following reasons:

(1) the Town was represented at the June 30, 1992 hearing by Selectperson

Frances E. Laurent; and

(2) no objection was expressed by the Town's representative relative to Avitar's amended assessment.

The Board, however, takes this opportunity to amend the fifth line in the first paragraph, page one, of the decision to substitute \$133,300 for the 1990 building value incorrectly indicated as \$108,800 (the same as in 1988). The total value expressed, \$176,096, is correct for 1990.  
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Richard J. and Virginia H. Daschbach

v. Town of Westmoreland

Docket Nos.: 7602-89 and 10844-90

Page 8

George Twigg, III, Chairman

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Paul B. Franklin, Member

Richard J. and Virginia H. Daschbach  
v. Town of Westmoreland  
Docket Nos.: 7602-89 and 10844-90  
Page 9

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Richard J. and Virginia H. Daschbach, Taxpayers; and Chairman, Selectmen of Westmoreland.

Dated:

Valerie B. Lanigan, Clerk

0007

Richard J. and Virginia H. Daschbach  
v. Town of Westmoreland  
Docket Nos.: 7602-89 and 10844-90  
Page 10

**Richard J. Daschbach and Virginia H. Daschbach**

**v.**

**Town of Westmoreland**

**Docket Nos.: 7602-89 and 10844-90**

**ORDER**

During the board's deliberation in this case, it was unclear as to the total acreage of land in current use for Lot 34 and Lot 10. The assessment record cards indicate a total acreage for Lot 34 of 26 acres and a total acreage for Lot 10 of a half acre. It appears from the assessment record card of Lot 34 the town has assessed two acres as the prime site, not in current use, and three additional rear acres, also not in current use. The balance, twenty-one acres, was assessed in current use. Lot 10, which consists of a half acre, was assessed in 1990 in current use. Thus the total area assessed between both parcels in 1990 in current use totals 21 1/2 acres.

On file with the board, is a copy of the taxpayers' 1985 application for current use assessment on which the taxpayers applied for a total of 24.7 acres for current use assessment.

It is unclear to the board from these facts whether the three acres on Lot 34 should be assessed in current use or not. Therefore, the board will grant both parties ten (10) days from the clerk's date on this order in which

Richard J. and Virginia H. Daschbach  
v. Town of Westmoreland  
Docket Nos.: 7602-89 and 10844-90  
Page 11

to submit additional evidence on what land was applied for in current use and what land was granted current use by the town, and any reasons why the amount granted is different than the amount listed on the 1985 current use application.

Richard J. and Virginia H. Daschbach  
v. Town of Westmoreland  
Docket Nos.: 7602-89 and 10844-90  
Page 12

#7602-89/#10844-90, Daschbach v. Westmoreland - Order  
Page 2

This order relates solely to this current use issue. The parties should not submit any further evidence or correspondence except as it relates to this current use issue.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Richard J. & Virginia H. Daschbach, taxpayers; and the Chairman, Selectmen of Westmoreland.

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Melanie J. Ekstrom, Deputy Clerk

Date: October 15, 1992

0009

Richard J. and Virginia H. Daschbach  
v. Town of Westmoreland  
Docket Nos.: 7602-89 and 10844-90  
Page 13