

Robert S. Wildes

v.

Town of Merrimack

Docket No.: 7799-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessments of:
Map/Lot #Land AssessmentBuilding AssessmentTotal Assessment

6D 1/011\$254,400\$93,000\$347,400;
6D 1/011-1\$247,500\$28,400\$275,900; and
6D 1/013\$130,400 0\$130,400.

The parcels shall be referred to as "Lot 11," Lot 11-1," and "Lot 13." For the reasons stated below, the appeals for abatement are denied. The Taxpayer owns several other properties that were not appealed.

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 failed to carry this burden.

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The Taxpayer argued the assessments were excessive because:

(1) the land assessments were excessive on a per-acre basis;

Lot 11

(2) the building has been vacant and not producing any income because he wanted to develop the property and to have to use the property would have required major repairs (approximately \$20,000);

(3) the land value is excessive, especially compared to the assessment on his vacant lots;

(4) the land assessments should have been calculated using the per-acre assessment used on his abutting "Lot 12";

Lot 11-1

(5) the lot is pie-shaped;

(6) the barn was not in a condition to be occupied;

Lot 13

(7) the lot is unbuildable because of the zoning restrictions; and

(8) it was worth approximately \$20,000.

The Town argued the assessments were proper because:

(1) they were arrived using models developed from market data in the Town;

(2) the Taxpayer's "Contiguous Parcels" (Lots 10, 11-1, 11, 12 and 13) total

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14.04 acres with assessments totalling \$1,567,600, which is reasonable and proportional;

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(3) the state appraised the contiguous lots for \$3,500,000 during an eminent-domain proceeding; and

(4) the Taxpayer purchased in 1986 Lots 11 and 11-1 for \$515,000 and Lot 13 was bought for \$106,000 in 1986 and if these prices are time adjusted the assessments are in line with the purchase prices.

Board's Rulings

We find the Taxpayer failed to prove the assessments were disproportional. The appeals are denied for two related reasons: 1) there was no evidence on the correctness of the total assessments on the Taxpayer's taxable estate (an assessment and proportionality issue); and 2) there was no evidence of the Properties' values when considered together with the other Contiguous Parcels (a valuation issue).

In determining the proper and proportional tax burden of any taxpayer, the board must "consider" all of the taxpayer's property in the municipality whether each property was appealed or not. Id.; see also Bemis Bro. Bag Co. v. Claremont, 98 N.H. 446, 451 (1954); Amoskeag Mfg. Co. v. Manchester, 70 N.H. 200 (1899). The Taxpayer did not carry this burden and wanted the board to value each lot as if the Taxpayer did own the Contiguous Parcels.

Ownership of the Contiguous Parcels, especially in this location--

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frontage on both the F.E. Everett Turnpike and the D.W. Highway--certainly is a factor in determining the highest and best use of the parcels. See IAAO, Property Appraisal and Assessment Administration 31, 646 (discussing and defining highest and best use), 180-81 (discussing factors affecting land values), 656 (defining plottage). To ignore the Taxpayer's ownership of the Contiguous Parcels would require turning a blind eye to reality and to sound valuation practice. As mandated by our duty, our eyes are wide open and our vision is clear.

Finally, the Taxpayer admitted the Contiguous Parcels were purchased to create one large tract for development. The Taxpayer also admitted he received a "written, legitimate offer" for all the Contiguous Parcels for \$2,100,000, but he rejected the offer as being too low. The rejected offer clearly shows the assessments on the Contiguous Parcels were not excessive.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert S. Wildes, Taxpayer; Office of the Assessor of Merrimack; and Jay L. Hodes, Esq., Representative for the Town.

Dated: January 28, 1993

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Valerie B. Lanigan, Clerk