

Stern Hall Spirt

v.

Town of Troy

Docket Nos.: 10120-90 and 10935-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of \$364,200 (land, \$73,650; buildings, \$290,550) consisting of 2 lots with two buildings on 3.2 acres (the Property). These appeals were consolidated for hearing. The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeals on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeals for abatement are 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 203.09(a); 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 assessment-review report, dated April, 1990, estimated market value to be \$282,250;

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2) an additional depreciation should have been given due to the two houses and the Property's location; and

3) it was assessed disproportionately to other properties, and at a higher percentage of fair market value than properties generally assessed in Town.

The Town argued the assessment was proper because:

1) functional and physical adjustments were given to both dwellings to address the age and restrictions on the Property;

2) the Property was combined into one lot with two dwellings;

3) the Taxpayer's appraisal incorrectly stated the square footage of the main house;

4) the Taxpayer's analysis was based on the previous assessment; and

5) a sales ratio study and comparables for land values indicated the Taxpayer's assessment was proper.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board did not rely on the inspector's report.

Board Findings

Based on the evidence, the board finds the 1990 and 1991 assessments should be \$313,990 (land, \$58,550; building #1, \$194,450; building #2, \$60,990) calculated as follows:

Land

Route 12 frontage	\$24,000
Marboro Street frontage	\$19,550
Paving, water and sewer	<u>\$15,000</u>
	\$58,550

Buildings

#1 No change \$194,450

#2

Increased economic depreciation to -40
 $\$107,000(\text{rep. value}) \times .95(\text{physical dep.}) \times .60(\text{econ. dep.}) = \$60,990$

The board concludes the Town erred in calculating the land value because the Town used excess-frontage and undeveloped adjustments based on the individual frontage of two lots rather than on the total frontage. The restrictions clearly result in these lots being effectively one lot, and thus, the adjustments should have been calculated using the total frontage. The 1988 Department of Revenue Administration manual was the source of the adjustment used above.

The board concludes the 10% economic depreciation on the second building was insufficient due to restrictions on the second house. The board concludes 40% depreciation is more appropriate.

If the taxes have been paid, the amount paid on the value in excess

of \$313,990 for 1990 and 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to Page 4 Spirt v. Town of Troy Docket Nos.: 10120-90 and 10935-91PT

RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Stephen B. Bragdon, Esq., representing Taxpayer; Chairman, Selectmen of Troy.

Dated: January 10, 1994

Melanie J. Ekstrom, Deputy Clerk