

Joseph Perrone

v.

Town of Deerfield

Docket No.: 10784-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of: \$8,800 on Lot 3, a vacant, 110-acre lot in current use; and \$60,120 (land \$39,700; building \$17,300; current use \$3,120) on Lot 6, a 42-acre lot with 39 acres in current use and a 3-acre building lot (the Properties). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. For the reasons stated below, the appeal for abatements 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 201.04(e); 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) a majority of the Properties' land is sloped and swampy, resulting in unbuildable lots, and the Properties contain beaver dams;

- 2) the building is in poor condition, is unfinished, and has no water;
- 3) PSNH has a powerline easement across Lot 6, resulting in high voltage lines and towers on the lot; and
- 4) the Properties are used mainly for deer hunting.

The Town argued the assessments were proper because:

- 1) the land assessments considered the topography, wetlands and the PSNH powerline easement, and the building was assessed as seasonal and under construction; and
- 2) the assessment on Lot 6 was well within range of comparable lots with seasonal camps, and the average per-acre, current-use assessment was \$2,096, yet the per-acre, current-use assessment on Lot 3 was only \$895.

Board's Rulings

Lot 3

Based on the evidence, the board finds the Taxpayer failed to prove his assessment on lot 3 was disproportionate. Lot 3 is entirely in current use, therefore any arguments by the Taxpayer and the Town as to its market value are moot. The Taxpayer was only taxed based on an \$8,800 current-use assessment. The Taxpayer did not submit any evidence or claim that the current-use assessment was improperly calculated. While both the Town and the Taxpayer agree that the Property has some physical limitations that would affect its value, these considerations are essentially negated when the Property is enrolled in current use and placed in the proper categories based on the utility and growth on the land.

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Lot 6

Based on the evidence, the board finds the proper assessment to be \$55,420 (land not in current use - \$36,100; land in current use - \$3,120; building \$16,200). This assessment is ordered because:

- 1) the board finds the one acre house site should receive a condition factor of .90 to account for the lack of the septic system and the well not being plumbed to the house; and
- 2) the house was assessed as having a half bath; based on the Taxpayer's evidence, there is no plumbing in the house and thus the depreciation should be increased by 5% on the building to result in proper building value of \$16,200.

No further adjustment is warranted on the land because:

- 1) The additional two acres with a homesite were properly adjusted by the Town for topography, swamp and power line easement conditions; and
- 2) The balance of the land is in current use and no adjustments are

warranted for all the same reasons that applied to Lot 3; and

- 3) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796

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(1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985);

Appeal of Town of Sunapee, 126 N.H. at 217-18.

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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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph Perrone, Taxpayer; and Chairman, Selectmen of Deerfield.

Dated: June 18, 1993

Melanie J. Ekstrom, Deputy Clerk

0008/005