

James P. and Joanne M. Rogers

v.

Town of Cornish

Docket Nos.: 10828-90 and 10987-91

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$62,050 (land \$45,800; buildings \$16,250) and 1991 assessment of \$81,000 (land \$45,800; buildings \$35,200) on an 11-acre lot with a mobile home (the Property). The Taxpayers 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 abatement is granted.

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 carried this burden and proved disproportionality.

The Taxpayers agreed with the building assessments for both years, but argued the land assessments were excessive because:

1) the Property is steep, wet, and the ledge severely impairs building potential;

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- 2) only 120 of the 900-foot frontage is usable;
- 3) the comparables have artesian wells and poured-concrete foundations, while the Property has a dug well and the trailer sits on block piers;
- 4) the Property has an easement for power poles and lines and a high voltage line runs across the Property;
- 5) the Property borders gravel pits and a stump dump, resulting in heavy equipment being used constantly;
- 6) the trailer home is 36 feet from a Class VI road, resulting in noisy recreational-vehicle traffic;
- 7) garbage and heavy objects are constantly being dumped on the Class VI road;
- 8) the shape, location, and condition of the Property makes it less marketable than the comparables; and
- 9) an appraiser estimates the December, 1990 market value to be \$70,000 including a \$35,000 site value, however, the appraiser neglected to address the lack of artesian well, street lights, and the power-line easement.

The Town argued the assessment was proper because:

- 1) adjustments were already applied to the assessment, i.e., increased topography depreciation for the wetlands, adding 2 acres to the wetlands, and recalculating the frontage, all resulting in a \$19,199 reduction in the original assessment; and
- 2) an 11.1-acre, undeveloped lot was sold on January 25, 1989 for \$52,400, and another 12-acre, undeveloped lot sold on July 16, 1990 for \$43,450.

The board's inspector reviewed the property tax card and filed a report with the board. This report concluded the proper assessment for 1990

should be \$50,600 (land \$34,350; buildings \$16,250); and for 1991 should be

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\$69,550 (land \$34,450; buildings \$35,350). (The increase in building value is due to the new trailer home.) The inspector increased the depreciation to address the power lines, topography, and the swampy frontage.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be: 1990 - \$50,600; and 1991 - \$69,550. These assessments are ordered because:

- (1) the Taxpayers showed the wet frontage, shape of lot, and abutting gravel pit were not adequately adjusted for by the Town;
- (2) the Taxpayers' 1990 appraisal is some indication of market value; and
- (3) the board's inspector's report reasonably adjusted for problems with the parcel.

If the taxes have been paid, the amounts paid on the values in excess of \$50,600 in 1990, and \$69,550 in 1991, shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. and Joanne M. Rogers, Taxpayers; and Chairman, Selectmen of Cornish.

Dated: February 18, 1993

Melanie J. Ekstrom, Deputy Clerk

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AMENDED DECISION

On March 2, 1993, the board of tax and land appeals (board) received a request from the Town of Cornish to review its decision of a 1991 valuation of \$69,550 (land \$34,450; buildings \$35,350). The Town is correct in its assumption that the land and building values should equal the total valuation.

The total valuation is correct and the board amends the last paragraph of page 2 of its decision to read as follows: "The board's inspector reviewed the property-tax card and filed a report with the board. This report concluded the proper assessment for 1990 should be \$50,600 (land \$34,350; buildings \$16,250); and for 1991 should be \$69,550 (land \$34,350; buildings \$35,200)."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to James P. and Joanne M. Rogers, Taxpayers; and Chairman, Selectmen of Cornish.

Dated: March 16, 1993

Melanie J. Ekstrom, Deputy Clerk

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