

Donald E. Thomson

v.

Town of Weare

Docket No.: 10847-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$21,100 on a vacant, .77-acre lot (the Property). The Taxpayer also owns, but did not appeal, Lot 143 assessed at \$86,800. 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 abatement is granted.

The Taxpayer has the burden of showing the assessment was 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 assessment was excessive because:

- 1) the Property is nonconforming and is contiguous to Lot 143;
- 2) the Property has only 60 feet of road frontage and, when combined with Lot 143's 66.09 feet of road frontage, would still not conform to zoning requirements; and

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3) the Property is used as the septic tank and leach field cite for Lot 143 and has been used this way since May, 1977.

The Town argued the assessment was proper because:

- 1) both the Property and the Taxpayer's abutting lot were conveyed by separate deed;
- 2) the Property qualifies as a nonconforming, preexisting lot and would, therefore, sell as a potential residential building lot; and
- 3) a -25% adjustment was made to address the Property's shape and septic location.

The board's inspector reviewed the assessment-record card and 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. This report concluded the proper assessment should be \$92,750 for both the Property and Lot 143. The inspector combined the contiguous lots and recalculated the land assessment based on 1.883 acres per the Town's survey. 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.

Board's Rulings

Based on the evidence, the board finds the Property should have been assessed as part of Lot 143. Therefore, we adopt the inspector's recalculated assessment of \$92,750 for both the Property and Lot 143. The board's conclusion that the Property should be assessed as part of Lot 143 is based on

the supreme court's decisions concerning the board's authority to assess
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adjoining lots as one parcel. See, e.g., Appeal of Loudon Road Realty Trust,
128 N.H. 624, 627-28 (1986); see also RSA 75:9. Based on the facts here, we
find unitary assessment to be appropriate even though the lots were separately
conveyed to the Taxpayer. Specifically, both lots are nonconforming (even if
combined), both lots are substandard given the size of other lots in the
neighborhood, and very importantly, there is a septic system for Lot 143 on
the Property, which clearly shows an integrated use. Thus, given the above,
the board concludes a unitary assessment of \$92,750 to be appropriate.

If the taxes have been paid, the amount paid on the value in excess
of \$92,750 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

Ignatius MacLellan, Esq., 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 Donald E. Thomson, Taxpayer; and Chairman, Selectmen of Weare.

Dated: October 26, 1993

Lynn M. Wheeler, Deputy Clerk

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