

Scott S. Wilkinson

v.

Town of Weare

Docket Nos.: 10855-90 and 11075-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessments of:

\$111,800 (land \$20,400; building \$91,400) on Lot 121, a .27-acre lot with a house; and

\$167,300 (land \$68,300; building \$99,000) on Lot 29, a .3-acre lot with a house.

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 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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

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The Taxpayer argued the assessment on Lot 121 was excessive because:

- 1) the house is 170 years old, has structural problems, and has deteriorated rapidly;
- 2) the house sits less than 15 feet from the road on a corner and was listed for sale in June, 1991 for only \$109,900, and then reduced to \$85,900, but no offers were made because of the traffic, noise, abutting lots, and the building's physical condition and proximity to the road;
- 3) the shed, which was assessed at \$679, is so rotten that it must be torn down;
- 4) the lot is only .23 acres and in a rundown neighborhood, which detracts from the lot's value;
- 5) the abutting farm stores large farming equipment right next to the house, and an 8-foot manure pile is kept behind the house;
- 6) the neighboring gravel pits result in constant noise and traffic, which significantly detracts from the lot's value;
- 7) a realtor estimated a \$79,900 - \$89,900 value as of April, 1992; and
- 8) the assessment should be \$80,000.

The Town argued the assessment on Lot 121 was proper because:

- 1) the land value is consistent with other properties in the village zone;
- 2) a -10% adjustment was given to address the building's condition;
- 3) the building's value is well within range of comparable homes with similar age and physical condition;
- 4) a sales analysis indicated that traffic, noise, and proximity to gravel

pits have no impact on a property's value; and

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5) the Taxpayer's real estate analysis was for 1992 and has no bearing on the 1990 tax year.

The Taxpayer argued the assessment on Lot 29 was improper because:

- 1) the severe pitch, which makes one-third of the lot unusable and makes the lake access difficult and dangerous, warrants more than a -25% depreciation;
- 2) the dock is portable and should not be assessed as real estate, and a similar lot with a superior dock sold for only \$62,000 in 1990;
- 3) the road is not maintained by the Town and is impassable two months out of the year, and the private road is not an asset to the lot and should not be assessed as such;
- 4) the lot's accessibility would limit the lot to seasonal use for any potential purchaser;
- 5) in 1985, the land was purchased for \$19,500, and in 1988-1989, the building, which has no full basement, cost \$125,000 to construct, resulting in a total purchase price of \$144,500;
- 6) the \$62,000 sale in 1990 included a \$30,000, assumed mortgage, and the sale price was not \$92,000;
- 7) a neighboring property almost 50% larger than the lot had a land assessment of only \$71,300; and
- 8) the assessment should be \$110,000.

The Town argued the assessment on Lot 29 was proper because:

- 1) the lot is a grandfathered, buildable lot and has greater utility than

larger lots;

2) the same methodology was used throughout the Town;

3) sales in the Lake Horace area support the lot's assessment;

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4) the land assessment was based on land sales with adjustments made for privacy, location and water frontage, and the lot received a -25% depreciation to address the topography;

5) although the house was built in 1988-89 for \$125,000, real estate prices continued to rise until late 1989;

6) the Taxpayer's supposed \$62,000 sale included a \$30,000 assumable mortgage resulting in a \$92,000 price; and

7) the lot was not assessed with a full basement, and the lot is year-round and is the Taxpayer's primary residence.

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 on Lot 121 should be \$95,000. The inspector adjusted the physical and functional depreciation on the building to address its age and condition, and gave an economical depreciation to address proximity to the road. This report also concluded the proper assessment on Lot 29 should be \$162,050. The inspector adjusted the topography depreciation. 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 proper assessment on Lot 121 is \$95,000, and Lot 29 is \$162,050.

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Lot 121

The board finds the Taxpayer's photographs and testing of the market and comments by perspective purchasers have merit, given the small size of the lot, its proximity to a heavily traveled road, and the adjoining property. The board finds the Taxpayer's evidence supports the value recommended by its inspector and finds an assessment of \$95,000 is proper. This assessment is consistent with the Taxpayer's April, 1992 realtor's estimate when that estimate is time adjusted to April, 1990.

Lot 29

The board finds the inspector's recommended assessment of \$162,050 is reasonable. The Taxpayer's photographs and description of the lot indicate that the lot is excessively steep, even relative to other properties in the area with steep lots. The Town's reduction of the condition factor from 350 to 325 only amounts to a 7% reduction for this topography feature. The board finds that the inspector's recommended adjustment of twice that, or approximately 14%, is more reasonable.

No further adjustment is warranted because the Taxpayer did not submit any conclusive evidence of the lot's market value. Moreover, the Taxpayer's land acquisition and building costs demonstrate the Property's value, without any time adjustment or other applicable adjustments, to be at

least \$144,500. However, the Taxpayer's purchase of the lot in 1985 for \$19,500 does not account for the development costs and the market inflation from 1985 through 1989. The one sale proffered by the Taxpayer, namely that of Hubert Mulligan, is dissimilar enough as to its improvements as not to be comparable. The question of the assumed mortgage does not need to be resolved

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since there was a subsequent sale of the property which, as the Town indicated, supports the assessment on that property.

If the taxes have been paid, the amount paid on the value in excess of \$95,000 for Lot 121 and \$162,050 for Lot 29 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Pursuant to RSA 76:17-c and board rule Tax 203.05, the Town shall also refund any overpayment for 1992, and 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.

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 Scott S. Wilkinson, Taxpayer; and Chairman, Selectmen of Weare.

Dated: September 20, 1993

Lynn M. Wheeler, Deputy Clerk

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ORDER

This order relates to the "Town's" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting clarification. See RSA 541:3.

The board did not give the significant weight to the time-adjusted realtor's letter as asserted by the Town. The realtor's letter was only one factor (and confirmatory at that), and the board did not rely on the specific time-adjusted value. The board merely accepted the board's inspector's conclusion as a reasonable conclusion consistent with the evidence.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq.,

Member

I certify that copies of the within Order have this date been mailed, postage prepaid, to Scott S. Wilkinson; and George W. Hildum for the Town.

Date: October 19, 1993
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Valerie B. Lanigan, Clerk