

Leonard A. and Aileen P. West

v.

Town of Weare

Docket No.: 10884-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

Lot 4 - \$130,300 (land \$38,800; building \$91,500) on a 2.17-acre lot with a house; and

Lot 5 - \$48,700 (land \$43,300; building \$5,400) on a 3.84-acre lot with a racetrack and sheds.

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 denied.

The Taxpayers have the burden of showing the assessments were 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 failed to carry this burden and prove disproportionality.

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The Taxpayers argued the assessments were excessive because:

- 1) the properties were spot assessed as commercial, yet Lot 4 had a residential home and Lot 5's highest and best use was a buildable, residential house lot;
- 2) the properties have only 200 cars per-day in traffic, and Lot 5 sits on a dead-end road;
- 3) the properties have been listed for sale for three years for \$179,000 (including \$40,000 worth of equipment) and have not been purchased;
- 4) the abutting lot had five dwellings in severe disrepair, numerous abandoned vehicles, and scrap materials, all of which detracted from the value of Taxpayers' properties; and
- 5) an April 1, 1990 appraisal estimated a \$106,000 value for Lot 4 and a \$35,000 value for Lot 5.

The Town argued Lot 4's assessment was proper because:

- 1) the assessment was well within the range of the guidelines established during the 1990 revaluation and within the range of the appraiser's comparables;
- 2) the lot contains a house, shop, and equipment shed, and the appraiser's comparables do not contain any outbuildings; and
- 3) the Taxpayers' appraisal report indicated there were no unfavorable factors noted, and therefore, the abutting lot did not negatively impact the lot's value.

The Town argued Lot 5's assessment was proper because:

1) the lot contains a dirt race track, a concession stand, fences, and movable bleachers with a 270-person seating capacity;

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2) the land was assessed 40% less than commercial property, and if the lot were located on Route 114, the land assessment would have been \$72,100;

3) the lot's highest and best use was not as a residential property but as commercial property, which was how the property was used and assessed; and

4) the Taxpayers' appraiser's comparables were not comparable because two were vacant, residential lots and one was a 19.97-acre woodlot.

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 Lot 4's assessment should be \$123,900, and Lot 5's should be \$44,350. The inspector adjusted the economic factors on Lot 5's land assessment to address the neighboring lot's abandoned vehicles and trash. 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.

The board did not rely upon the inspector's report because of his limited review of the Property and its assessment and because the Taxpayers' evidence was insufficient to support lowering the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry

their burden. One of the main issues concerns whether the properties' highest and best uses were commercial or residential. The Taxpayers claimed the highest and best uses were residential, and the Town claimed the highest and

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best uses were commercial. Given this dispute and the burden on the Taxpayers, the board concludes the Taxpayers did not carry their burden to show that the Town erred in its highest-and-best-use analysis. This conclusion is especially appropriate given the large outbuilding on Lot 4, which allows Lot 4 to have a dual use -- as a residence and as a commercial garage for an independent contractor such as a builder etc. Concerning the racetrack, it is presently being used as a racetrack, and its location next to another commercial lot also weighed against the Taxpayers' highest-and-best-use conclusion.

Turning to the Taxpayers' appraisal, the board finds the appraiser made two major errors: 1) he failed to make any adjustment for comparable number three, which the Town stated was unfinished on the sale date; and 2) he failed to make any adjustments for the large outbuildings on Lot 4. If the board accepted the appraiser's value conclusion on Lot 4 -- in other words, without addressing the other issues raised by the Town concerning the appraisal -- the adjusted appraisal would be \$126,000 calculated as follows.

Taxpayers' appraisal	\$106,000
Plus outbuildings	\$ 14,600
Plus commercial value	<u> 6,000</u>
TOTAL	\$126,600

Concerning both lots, as discussed above, the board finds the Taxpayers did not overcome the Town's conclusion that the properties had

commercial value beyond simply residential value. We also note that the Town made sufficient downward adjustments to the properties' assessments to reflect the fact that even though they were commercially zoned, they were not located in the best location for commercial properties. Specifically, a -40% adjustment was made to both land assessments to reflect this factor.

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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

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 Leonard A. and Aileen P. West, Taxpayers; and Chairman, Selectmen of Weare.

Dated: October 26, 1993

Lynn M. Wheeler, Deputy Clerk