

David and Carol Finch

v.

Town of Weare

Docket No.: 10909-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of \$140,300 (land, \$38,500; buildings, \$101,800) on Map 201, Lot 77 consisting of 0.71 of an acre and a home and \$35,700 (land only) on Map 201, Lot 76 consisting of 5.30 acres of land (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in December, 1989 for \$140,000 and the purchase price was arrived at based on an August, 1989 appraisal;
- (2) an April, 1991 preliminary study by C. A. Nichols, Ltd estimated a value range of \$150,000 to \$160,000;

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(3) the Property is located in a Village District with only certain types of uses allowed and anytime the use is changed, planning board approval must be sought;

(4) the lot required fill for the parking lot and the balance of the lot that is not developed and filled is wetland; and

(5) comparables indicate a difference of assessments for similar properties.

The Town argued the assessments were proper because:

(1) the Property consists of two parcels - Lot 76 was not assessed commercially, Lot 77 was assessed commercially based on its highest and best use being commercial;

(2) the Taxpayers comparables are all residential properties, and did not recognize its commercial permits;

(3) as of April, 1990, the Taxpayers had a fully operational commercial property;

(4) a home occupation is permitted in the entire Town and would not be assessed commercially;

(5) in 1990, an adjustment was made because the Property needed a new septic system; and

(6) the Town inspected the building and changed the unfinished half story to unfinished attic.

Board's Rulings

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Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed for the following reasons:

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(1) The Taxpayers August, 1989, appraisal was prepared for the purpose of establishing a value of the Property for its subsequent sale in December, 1989. At the time of the appraisal, the Property which is located in the Village District, was being utilized as residential and the appraiser arrived at the estimate of value based on comparable residential properties.

Subsequent to its sale, and as of April 1, 1990, the Property was being utilized as retail and office space and the Town arrived at an assessed value for Lot 77 based on its highest and best use being commercial. Lot 76 was assessed as residential. The board finds the Town appropriately assessed the Property based on its highest and best use as of April 1, 1990.

(2) C.A. Nichols opinion of value range of \$150,000 to \$160,000 was a "preliminary opinion" as of April, 1991. The assessment under appeal is as of April 1, 1990 and the appraiser offered no evidence of the market conditions as of that date.

(3) The Town made an appropriate adjustment to the Property for a poorly functioning septic system and also adjusted the building's story height. The board finds no further adjustments are warranted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to David and Carol Finch; and the Chairman, Selectmen of Weare.

Dated: September 14, 1993

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Valerie B. Lanigan, Clerk