

Jeanne Stapleton/Riverside Trust

v.

Town of Carroll

Docket No.: 8428-90

DECISION

The "Taxpayer" appeals pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$143,500 (land, \$107,200; building, \$36,300) consisting of 8 seasonal cabins in a commercial zone on 1.36 acres (the Property). 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).

The Taxpayer argued the assessment was excessive because:

- 1) the land was assessed as commercial property when it is used as a family, cabin colony;
- 2) the land was assessed more than other comparables;

- 3) the property-record card had errors about the buildings; and
- 4) all of the cabins are seasonal.

The Town argued the assessment was proper because it was arrived at using the sales data and the same methodology as used throughout the Town. The Town stated it assessed the Property as a commercial property because that is its highest and best use. At the board's request the Town answered certain questions about zoning and site-plan review.

The crux of this appeal is whether the Property should be assessed as commercial property (the Town's position) or as residential property (the Taxpayer's position). Both positions miss the mark because the Property should be assessed as a residential property with commercial potential. The Taxpayer would have us ignore the Property's commercial value simply because the Property is only being used for residential purposes. This argument fails because the Property has commercial potential that would be recognized in the market. The Town would have us ignore the present residential use and assess the Property as if it were now commercial property. This argument fails because it ignores the Property's present use and the effect this residential use has on the potential commercial use. The Town's basic assumption -- that these are "'not for rent' family cabins" that have immediate commercial value -- is wrong. The Property is no longer used commercially, and contrary to the Town's position, the Taxpayer or a purchaser could not, without Town approval, change to a commercial use. Any owner would have to go through the site-plan-review process to use the Property commercially because the Taxpayer has

abandoned the Property's commercial use. See Lawlor v. Town of Salem, 116 NH 61, 62 (1976); see also RSA 674:19; RSA 674:23. Thus, to change the use,

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site-plan approval would have to be obtained. If the owner tried to unilaterally change to a commercial use, the Town or any resident could force the owner to go through the planning process and comply with the new site-plan regulations. This risk must be considered in assessing the Property.

The board, has concluded the Town's methodology was wrong. However, the Taxpayer has not submitted any evidence of the Property's correct value. Normally, we would deny the appeal because of this lack of evidence, but the Town's error should be corrected. Since there is a dearth of market evidence, the board must be conservative in reducing a value. The board finds the proper assessment should be \$117,820 (land, \$81,520; buildings, \$36,300). No reduction was due on the buildings assessment. The land assessment, however, was recalculated as follows: $\$24,400 \times 1.10 \times 3 \times 1 + \$1,000 = \$81,520$.

If the taxes have been paid, the amount paid on the value in excess of \$117,820 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

George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jeanne Stapleton, Taxpayer; Chairman, Selectmen of Carroll; and courtesy copy to Gary J. Roberge, Avitar.

Dated: July 20, 1992

Melanie J. Ekstrom, Deputy Clerk