

**Brenda Carver**

**v.**

**Town of Windham**

**Docket Nos.: 8515-90 and 11065-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 adjusted assessment of \$170,660 (land \$26,160; buildings \$144,500) and 1991 assessment of \$169,660 (land \$26,160; buildings \$143,500) on a 1.02-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town with a 1990, \$19,990 assessment and a 1991, \$20,990 assessment. For the reasons stated below, the appeal for abatements is 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 203.09(a); 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 assessments were excessive because:

- 1) an April, 1990 appraisal estimated a \$265,000 value;
- 2) the 1-1/2 story designation on the assessment card appears in error because the upper floor only has a bedroom, bath and balcony;

Page 2

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

- 3) the assessment seemed higher than assessments on other superior properties;
  - 4) the house's roof needed full replacement due to defective construction and there was also a defect in the kitchen floor;
  - 5) the house has an underground 1,000 gallon oil tank, which affects value;
- and
- 6) the Property has some functional problems due to layout and bathrooms.

The Taxpayer did not have any opinion about the assessment on the nonappealed lot, but she stated it was a legal lot.

The Town argued the assessments were proper because:

- 1) the Property was assessed using the same methodology used throughout the Town;
- 2) a 10% functional depreciation was given to reflect the upper floor layout, which adequately adjusted for this issue;
- 3) the grade factor was increased to B+5% because of the house's quality;
- 4) the Taxpayer's appraisal grossly underestimated value by not attributing value to the cathedral ceiling, under valuing the gross-living-space adjustment, and using too low a grade, especially on the basement finish;
- 5) the nonappealed lot was under assessed--it had a 1990 market value of \$70,000 or a \$44,200 assessment--thus, the lot was under assessed and any over assessment on the Property should be reduced accordingly; and
- 6) the assessment was consistent with the Town's comparables.

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

Board's Rulings

Based on the evidence, we find the correct assessment should be:

1990	2B/241	\$137,590		
	2B/240	\$ 25,605	<b>Total</b>	<b>\$163,195</b>
1991	2B/241	\$160,085		
	2B/240	\$ 25,605	<b>Total</b>	<b>\$187,625</b>

These assessments are ordered for the following reasons.

- 1) The board found the Taxpayer's appraisal to be lacking in three areas:
  - a) the gross-living-area adjustment used;
  - b) the lack of attributing value to the cathedral ceiling; and
  - c) the grading on the home.

Therefore, the board asked its inspector to review the appraisal and the file and to submit a report to the board (copy attached). In this case, the inspector only reviewed the file; he did not perform an on-site inspection.

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.

Because the parties did not have an opportunity to comment on the inspector's report at the hearing, the parties may file any comment with a rehearing motion if deemed necessary. The inspector's report confirmed the board's conclusion that the gross-living-area adjustment was inadequate and that an adjustment should have been made for the cathedral ceiling. The board inspector was not asked to look at the issue of the Property's grade, but the

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

board concludes the Town's testimony, which was based on an inspection of the Property, evidenced the need to increase the grade on the building.

2) After making the adjustments recommended by the inspector, the board selected comparable number three as the most comparable property because it required the least number of adjustments. The board then increased the \$315,000 value on comparable three by 5% for the grade adjustment.

3) Based on the Town's evidence, as supported by the Taxpayer's appraiser's indicated site value, the vacant lot was underassessed. The board calculated the vacant lot's value as follows.

\$70,000	base value
<u>x . 90</u>	shared driveway adjustment
\$63,200	
<u>x . 90</u>	wet areas adjustment
\$56,900	1990 fair market value of lot
<u>x . 88</u>	
\$50,070	1991 fair market value of lot

4) The board is required to consider the Taxpayer's entire taxable estate in the Town. Thus, while the board concludes the Property was overassessed the board finds the vacant lot was underassessed, thereby reducing the abatement granted on the appealed Property.

5) The board concluded for the 1990 tax year an adjustment of \$25,000 should have been made to the Property's value given the requirement for extensive repairs to the roof. This adjustment has only been made for 1990 since the repairs were made and completed by 1991.

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

6) Based on the above, the board finds the following market values and assessed values.

**1990 - Market Value to Assessed Value**

\$315,000	
x 1.05	grade adjustment
\$330,750	
- 25,000	repairs
\$305,750	
+ 56,900	lot
\$362,650	
x .45	equalization ratio
\$163,195	assessment

**1991 - Market Value to Assessed Value**

\$330,750	
x .88	time adjustment
\$291,060	
+ 50,070	lot
\$341,130	
x .55	equalization ratio
\$187,625	

If the taxes have been paid, the amount paid on the value in excess of \$163,195 for tax year 1990 and \$187,625 for tax year 1991 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. 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. RSA 76:17-c I.

Page 6

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Brenda Carver, Taxpayer; and Chairman, Selectmen of Windham.

Dated: March 10, 1994

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Valerie B. Lanigan, Clerk

Page 7

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

**BOARD OF TAX AND LAND APPEALS**  
**REVIEW APPRAISER'S WORKSHEET**

**Town Name:** Windham

**Docket #:** 8515-90

**Owner's Name:** Brenda Carver

**Property Address:** 34 Telo Road

**Property Type:** Single Family Residence

**Total Assessment:** \$170,660

**Building Assessment:** \$144,500

**Land Assessment:** \$26,160

**DRA's Ratio:** 0.45

**COD:** 21.65%

**Equalized Total Assessment:** \$379,244

**Eq. Building Assessment:** \$321,111

**Eq. Land Assessment:** \$58,133

**Gross Building Area(GBA):** 2,571 sf

**Total Land Area(TLA):** 1.02 Acres

**Type of Review:** Office

**Date of review:** February 3, 1994

**Report Submitted:** February 3, 1994

**Comments:** I have been requested by the Board to review this file and give my opinion on the Gross Living Area adjustment of \$20 per square feet used by Dale M. Gerry in the appraisal dated June 6, 1991. I have also been requested to give my opinion on the lack of an adjustment for the cathedral ceiling, which covers 1,715 square feet of first floor. I have not viewed the property or used any information other than that which is in the file.

Listed in Addendum A are 7 sales which were submitted by the taxpayer. 3 of these sales are in the appraisal performed by Dale Gerry; the property record cards of the 4 other sales were submitted as a part of taxpayer exhibit #2. The sales prices have been adjusted by -6% per month to April 1, 1990 and the sales have been arranged in order of living or usable space<sup>1</sup>. Averages were calculated for all 7 samples, the 3 smallest samples the 2 middle size

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<sup>1</sup> The listed living space reflects first floor space as indicated by the taxpayer.

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

samples, and the 3 largest samples. 3 matched pairs analyses were performed.

Comparing: 1) the 3 smallest to the 2 middle indicated a size adjustment of \$95.10 per square foot; 2) the 3 largest to the 3 smallest indicated a size adjustment of \$54.12 per square foot; and 3) the 3 largest to the 2 middle indicated a size adjustment of \$20.42 per square foot.

One factor that must be considered is that the 2 middle sized sales have 450 and 500 square foot finished basements. No adjustment has been made to account for these or any other differences except time. It is my opinion that a range of \$30 to \$70 per square foot would be indicated after adjustments.

The largest indicated adjustment is for sizes of 2,000+ sf to 2,700+ sf. The smallest adjustment is for sizes of 2,700+ sf to 3,600+sf. This indicates that as the living space increases the added value decreases. In other words, an additional 100 square feet would be worth more for a 2,000 square foot building than for a 3,000 square foot building. With this in mind, it is my opinion that comparable #1 should have been adjusted by \$50 per square foot or +\$23,550, comparable #2 should have been adjusted by \$30 per square foot or -\$18,870 and comparable #3 should have been adjusted by \$60 per square foot or +\$52,260. Applying these adjustments would indicate the following values: 1) \$278,750; 2) \$265,230; and 3) \$297,260.

It is my opinion that the a cathedral ceiling of this extent would add substantial value to the property. On a Cost Approach, it would be necessary to increase the construction cost by as much as \$10 to \$15 per square foot to account for the ceiling. It is my opinion that the cathedral ceiling adds \$20,000 to the value of the property. Applying this adjustment to the 3 comparables would indicate the following values: 1) \$298,750; 2) \$285,230; and 3) \$317,260.

**Conclusion:** Since I have not performed a complete analysis of the property and I have only addressed 2 issues, I cannot form an opinion of final value.

Very truly yours,

Scott W. Bartlett  
Board of Tax and Land Appeals  
Review Appraiser

Page 9

Carver v. Town of Windham

Docket No.: 8515-90 and 11065-91PT

**ADDENDUM A - BUILDING SIZE ADJUSTMENT ANALYSIS**