

Wayne A. and Barbara J. Kearsley

v.

Town of Mont Vernon

Docket No.: 8603-90

DECISION

The "Taxpayer's" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of \$352,300 (land \$124,150 - buildings \$228,150) on Lot 10-20, a 2-acre lot with a single-family home, and \$109,300 on Lot 10-15, a 2-acre vacant lot across the street (the Property). 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 reasons stated below, the appeal for Lot 10-20 is denied, and the appeal for Lot 10-15 is granted.

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 carry this burden and prove disproportionality on Lot 10-20, therefore, the remainder of this decision will address Lot 10-15.

The Taxpayers argued the assessment on Lot 10-15 was excessive because:

- 1) a 2-acre, vacant lot sold for \$35,000 in 1990, and the average listing price today is \$47,000;
- 2) the land value seems to be based mainly on frontage, which is unrealistic;

and

3) the assessed land value on Lot 20 should be \$65,512, and Lot 15 should be \$61,927.

The Town argued the assessment was proper because:

- 1) the same methodology was used throughout the Town;
- 2) the vacant lot provides a view for Property; and
- 3) similar vacant and buildable 2-acre lots are assessed equitably.

Board's Rulings

The Taxpayers are disputing the land assessments of both lots. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. Averaging sales, as done by the Taxpayers, is not a conclusive method of establishing

market value since averaging ignores the unique characteristics of properties.

Rather, analyzing, comparing, and weighing sales data and then correlating the most pertinent aspects of the sales to the subject property arrives at the best indication of market value.

We find the Taxpayers failed to prove the assessment was disproportional on Lot 10-20. Based on the evidence, however, we find the correct assessment for Lot 10-15 should be \$92,900. The board's inspector reviewed the file property tax card, and filed a report with the board. This report concluded that a 15 percent adjustment was warranted for the Lot being undeveloped.

If the taxes have been paid on Lot 10-15, the amount paid on the value in excess of \$92,900 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

GT _____ PF _____ IM _____ ML _____

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to

Dated:

Melanie J. Ekstrom, Deputy Clerk