

Samuel A. Tamposi and William D. Korsak
White Pine Associates/Bellamy Woods Co.

v.

Town of Lee

Docket Nos.: 8653-90 and 8653-90A

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: \$128,800 on a 25.1-acre, vacant lot (Map 7, Lot 8); and \$1,282,900 (land \$945,700; buildings \$337,200) on a 78.94-acre lot with a store (Map 4, Lot 2) (the Properties). 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 appeals for abatement are 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 assessment of Map 7, Lot 8 was excessive because:

- 1) the Property abuts wetlands and a 100-year flood zone;
- 2) the Property has several development restrictions;
- 3) the Property was purchased in 1985 for \$18,000; and
- 4) the Property is currently listed for sale for \$50,000.

The Taxpayers argued the assessment of Map 4, Lot 2 was excessive because:

- 1) the Property has limited access from Route 4 west, which hinders the development potential;
- 2) a February, 1989 engineer's report by Thomas F. Moran advised of potential problems in obtaining Town and State development approval;
- 3) the partnership owning the land was liquidated, and the buyout of the limited partners was less than the assessed value; and
- 4) the proper assessed value should be \$700,000.

The Town argued the assessments were proper because:

- 1) the Properties are in a prime location;
- 2) the Taxpayers presented no appraisals or comparable sales of the Properties or supporting documentation to justify lower assessments;
- 3) the development was dropped at the developer's request and not because of Town or State approval;
- 4) the Town submitted a list of properties in the Lee traffic circle and Routes 4 and 125 for comparative purposes to support the contention that the

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same methodology was used in assessing properties similar in nature to that of the subject Properties;

5) a 50,000 square-foot shopping center was already approved and the

Properties have extremely high visibility; and

6) the Taxpayers did not meet the burden of proof.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden and prove disproportionality. The board finds that while the Properties may have higher than average site-development costs because they abut wetlands and a 100-year flood zone, the Taxpayers gave no evidence of market value on which to base a decision.

The Taxpayers did not present any credible evidence of the Properties' fair market value. To carry this burden, the Taxpayers should have made a showing of the Properties' fair market value. This value would then have been compared to the Properties' assessments 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.

The board is not obligated or empowered to establish a fair market value of the Properties. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessments have resulted in the Taxpayers paying an unfair share of taxes. See Id.

Arriving at a proper assessment is not a science but is a matter of informed

judgment and experienced opinion. See Brickman v. City of Manchester, 119
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N.H. 919, 921 (1979). This board , as a quasi-judicial body, must weigh the
evidence and apply its judgment in deciding upon a proper assessment. Paras
v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The Town testified the Properties' assessments were 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).

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been
mailed this date, postage prepaid, to Samuel A. Tamposi, William D. Korsak,
White Pine Associates, and Bellamy Woods Co., Taxpayers; and Chairman,
Selectmen of Lee.

Dated: April 11, 1993

Melanie J. Ekstrom, Deputy Clerk

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