

Robert D. and Esther E. Bruce

v.

Town of Canaan

Docket No.: 9448-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$108,100 (land \$39,100; buildings \$69,000) on a 1.09-acre lot with an antique shop and garage (the Property). For the reasons stated below, the appeal for abatement 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers carried their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) a survey of the Property lists the land areas as .8 acres, not the 1.09 acres as assessed by the Town;
- (2) the lot was purchased in 1985 for \$8,000;
- (3) the two gambrel garage structures have a lower replacement cost than that assessed by the Town;

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- (4) the water body it fronts on is quite swampy and not as attractive as several other ponds that are developed with cottages;
- (5) the Hammond property across Route 4 has a lesser land value but actually has a better view and site;
- (6) the Property has only a dug well that is not drinkable; and
- (7) the Property had a value of \$65,000.

The Town recommended at the hearing the assessment be reduced to \$84,800 (land, \$30,000; buildings, \$54,800) and argued the assessment was proper because:

- (1) the site provides a good unobstructed view of Mirror Lake and Cardigan Mountain;
- (2) the shop was assessed as a commercial store and reduced for the unfinished areas; and
- (3) several sales in the neighborhood supports the land assessment of the Taxpayers' Property;

Board's Rulings

Based on the evidence, we find the correct assessment should be \$76,100 (land \$30,000; buildings \$46,100). This assessment is ordered because:

- (1) the board finds the Taxpayers presented credible testimony as to what the replacement costs of these garage structures would be; the Taxpayers stated that Mr. Bruce was a general contractor and was very familiar with these types of buildings, having constructed many of them throughout the years;

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(2) the Town's methodology for appraising or valuing the shop and garage started with base prices of buildings that were substantially different than what the Taxpayers' actual buildings were comprised of and thus, substantial adjustments are necessary to make the depreciated value reflective of market value;

(3) the board finds that contrary to the Town's assertion, these Properties are not so unique or special purpose as to cause their market value to exceed their replacement costs;

(4) an additional 10% depreciation should be applied to the shop and 20% additional depreciation to the garage to reduce their replacement cost estimates to reflect their actual construction and contributory value to the Property as a whole; and

(5) the Town's proposed adjustment correcting the acreage of the land and resulting \$30,000 site value is reasonable given the evidence of the location and view from the Property.

The board was unable to determine with certainty what the final tax liability of the Taxpayers were in 1990. The Taxpayers submitted a copy of a tax bill showed the total assessment to be \$108,100. However, the Town testified that, based on the records available to them at the hearing, they believe the assessment was abated to \$90,900. In complying with this order, the Town shall research their records and if the taxes have been paid, the amount paid on the value in excess of \$76,100 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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If the taxes have been paid, the amount paid on the value in excess of \$76,100 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert D. and Esther E. Bruce, Taxpayers; and Chairman, Selectmen of Canaan.

Dated: December 1, 1993

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Valerie B. Lanigan, Clerk