

Edward W. Shield

v.

Town of Holderness

Docket No.: 9546-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: \$161,200 (land \$60,000; buildings \$101,200) on Lot 84, a lot with an apartment house; and \$235,600 (land \$82,500; building \$153,100) on Lot 84-1, a 1-acre lot with a warehouse (the Property). For the reasons stated below, the appeal for abatement is denied. The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. However, due to the complexity of the case, and in order to arrive at an appropriate decision, the board held a hearing on July 21, 1993.

The board has reviewed the written submittals and the hearing testimony and issues the following decision.

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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry his burden and prove disproportionality.

Lot 84-1

The Taxpayer argued the assessment was excessive because:

- (1) the brick warehouse at one time housed three different businesses, was vacant the entire year of 1990 and continued to be vacant until November, 1991 when a boat refinishing company rented the garage area for \$900 a month;
- (2) at present, there is still only one business occupying the building for \$900 a month;
- (3) a boat storage unit owned and operated by Kimball Marine sits on part of the land which is currently in litigation;
- (4) taxes are not being paid on the boat storage unit but are on the land it sits on; and
- (5) the assessment should be reduced for its lack of income potential.

The Town recommended a reduction in the land value to \$36,800 and argued the resulting revised assessment was proper because:

- (1) the Town is not assessing the Property as waterfront land;
- (2) the Property is assessed consistent with commercially priced land; and
- (3) no adjustment was made for a right-of-way over the Property.

Board's Rulings

Lot 84

The Board finds the Town's reduction in the land value for a correction of the lot size to .18 acres is reasonable. The Taxpayer did not submit any further evidence to warrant a further abatement on this lot.

Lot 84-1

Based on the evidence, we find the Taxpayer failed to prove the Property's assessment was disproportional. In 1990, the Town was not aware,

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nor would the public have had knowledge of the legal dispute over the land on which the boat-storage building sits. It is the Taxpayer's responsibility to show the board how the cloud of ownership affects the value of the Property and the Taxpayer did not sustain this burden. Due to the uncertainty of the ownership of the waterfrontage, the Town reasonably did not assess the waterfront to the Taxpayer. Although the board feels the assessment of the building may be high, the Taxpayer provided no market evidence to support an abatement. To carry this burden, the Taxpayer 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Christopher Kelly of Property Tax Reduction Consultants, Agent for Edward H. Shield, Taxpayer; and Chairman, Selectmen of Holderness.

Dated: September 20, 1993

Valerie B. Lanigan, Clerk

0009 for 0004