

F. Cameron Ludwig

v.

Town of Weare

Docket No.: 9773-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$209,559 (land \$32,359; buildings \$177,200) on a 46.90-acre lot with a home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was 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 this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the only area of disagreement between the Taxpayer and the Town is the value of the 1.13-acre building site;
- (2) a real estate appraiser, Peter Stanhope, estimated the May, 1990 value of the 1.13-acre site, as if unimproved, to be \$18,500; and

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(3) the lot is located on Norris Road -- a gravel road that has a variety of land uses, property values, levels of maintenance, and curb appeal -- and runs parallel to Route 114.

The Town argued the assessment was proper because:

(1) the 1.13-acre lot is not enrolled in current use, is improved with an antique colonial, and is in a rural, attractive setting;

(2) the lot has greater utility than most lots since all of its square footage is improved with buildings, landscaping, driveway, etc.; and

(3) the assessment is based on sales which occurred between April 1, 1988, and April 1, 1990.

#### Board Rulings

Based on the evidence, the board finds the Taxpayer failed to meet his burden of proof for two general reasons:

(1) the Taxpayer focused his argument only on one component of the entire Property, namely the 1.13 acres not in current use, and attempted to prove it was disproportionally assessed while ignoring the balance of the 45+ acre parcel improved with a colonial home and yard improvements; and

(2) assuming, arguendo, that such an appraisal technique is appropriate, the Taxpayer's comparables were not at all comparable to the Property, nor were any adjustments made to account for the differences.

#### 1. Value as a Whole

The focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level

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than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

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. In this particular case, the Property would have had an ad valorem assessment (without current use being a consideration) of \$271,300.

The Taxpayer's suggested reduction on the singular component of the house lot results in a reduction of only \$11,900, or a proposed assessment of \$259,400.

This difference in assessment amounts to only a little over 4% difference. Even Mr. Stanhope, the Taxpayer's appraiser, agreed that such a variation between two appraiser's opinions of value was reasonable.

The Taxpayer did not present any evidence that the other components of the Property were properly assessed, other than the statement that he had reached such an agreement with the Town. The burden, however, is with the Taxpayer to show that the total estate within a taxing jurisdiction is disproportionately assessed in order for the board to grant an abatement. Appeal of Town of Sunapee, 126 N.H. at 217 (1985).

## 2. Taxpayer's Comparables

Even if one assumes, for argument purposes, that the board's ruling in the first section is not correct, the Taxpayer failed to show that the

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valuation on the site not in current use is disproportionate, even when viewed in isolation from the balance of the Property.

The Taxpayer's appraiser argued that the Taxpayer's lot is in a submarket that can be called "random lots". The Taxpayer's appraiser defined "random lots" as lots that are not part of an organized subdivision and, therefore, do not have the protection of uniform development that a subdivision would provide. The appraiser presented three sales of such random lots from which he derived a value estimate of \$18,500 for the subject site with no adjustments made to the sales. The appraiser's choice of comparables ignored all the other evidence as presented by the Town of over 100 lots that sold in the 1988-1990 time period, all in the range of \$30,000 to \$40,000, even including some that could be described as "random lots". Two of the lots that the Taxpayer's appraiser used had conditions such as upgrading of a road or consolidation with additional land that would cause the sales not to be comparable with the Taxpayer's Property. Further, the Taxpayer's comparables were different in the fact that the Taxpayer's site is part of a larger parcel, which provides some buffering and privacy for the homesite, and that the site had been developed for many years with significant landscaping and stone walls. Such factors are indeed relevant, and should be considered when valuing a site such as this. Paras v. City of Portsmouth, 115 N.H. 63, 67 - 68 (1975).

Further, it appears from the evidence that the Taxpayer's appraiser performed the appraisal several days prior to the hearing and may have caused the appraisal to conform to an earlier general opinion he gave the Taxpayer in

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a letter dated November 9, 1990, wherein he stated that due to the inferior size, lack of frontage, and configuration that severely limits the lot's utility, the site would have a value in the mid-teens. Mr. Stanhope, upon questioning during the hearing, indicated that after discussions with the Taxpayer's representative, he no longer felt that the configuration of the site was an issue in valuing the Property because it was part of a larger parcel. And yet, his conclusion of value, after being disavowed of that notion, coincided with his earlier estimate and runs counter to the plethora of market evidence as submitted by the Town.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to B.J. Branch, Esq., Attorney for F. Cameron Ludwig, Taxpayer; and Chairman, Selectmen of Weare.

Dated: September 13, 1993

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Valerie B. Lanigan, Clerk

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