

Thomas E., Catherine and Timothy M. Lamb and Elizabeth E. Bell

v.

Town of Milton

Docket No.: 11059-91-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$69,000 (land \$55,100; buildings \$13,900) on a .27-acre lot with a camp (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 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 this burden and proved disproportionality.

The Taxpayers argued the adjusted assessment was excessive because:

- (1) the camp is seasonal and is only occupied two to four weeks per year;
- (2) the land is steep and has ledge;

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- (3) there were errors on the assessment-record card, i.e., there is no heating system, water heater, shower, insulation, trim, or well, there are only two rooms and not three, and the acreage is .22 acres and not .27 acres;
- (4) a December 1991 appraisal estimated a \$42,800 value; and
- (5) the assessment should be \$42,800

The Town adjusted the Property's water frontage and corrected the acreage. The Town argued the adjusted assessment (\$60,700 and apparently \$58,700) was proper because:

- (1) the assessment was already reduced to address the Taxpayers' concerns, and the Taxpayers were going to withdraw their appeal after the reduction; and
- (2) the Taxpayers' appraisal was flawed because the comparables had no right-of-way to the lake and one is not even in the Town, and the only waterfront comparable had no supporting data and did not even state how much waterfront the lot had.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the proper assessment should be \$44,950 (land \$36,850; buildings \$8,100). The inspector adjusted the acreage and depreciated the land value for the right-of-way and the topography and also depreciated the building value. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would

other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

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Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$46,280. This assessment is ordered for the following reasons.

1) Normally, the town is entitled to a presumption that the assessment is correct. Therefore, the taxpayer normally has the burden of proof. The town is entitled to this presumption of correctness because it is assumed that the town has complied with RSA 75:1, which requires towns to base assessments on market data, and RSA 75:8, which requires towns to review assessments and to adjust assessments based on changes in the market. In this case, we question whether the Town is entitled to that presumption of correctness. First, the Town did not provide the board with any back up data or analysis to support the calculations on the assessment card. Second, the board was unable to decipher the land calculation on the assessment card, e.g., the frontage calculations. Clearly, $110 \times \$900 \times .50$ does not equal \$31,200. This frontage calculation also does not work on the other Town tax cards that the board has reviewed in other appeals. While assumptions are dangerous, it is the board's assumption, based on its knowledge and review of many assessment methodologies and property-record cards, that a separate factor was applied for the lot's frontage relative to some standard frontage amount. However, the basis for that factor was not presented or described by the Town. Third, the significant assessment changes from the original \$100,200 assessment to

the revised \$58,700 assessment raises concerns about the quality of the Town's assessing work. These problems, and the board's lack of confidence in the assessment cards, lead the board to question whether the Town is entitled to

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the normal presumption of correctness. The board has, nonetheless, decided this case solely based on the evidence, and our concerns about the Town's assessing practices has entered into our determination of what weight to give the Town evidence. Specifically, because of these problems, the board has given little weight to the Town's assessment analysis and its discussion of the Taxpayers' evidence.

2) The board's inspector recalculated the assessment at \$44,950. The inspector attempted to make adjustments based on his understanding of the assessment cards and the Property's condition.

3) The board recalculated the assessment: a) using a revised acreage of .22 acres rather than .27 acres; b) adopting the Town's revised frontage figure of \$29,200; and c) making a -20% adjustment to the land value due to the right-of-way. This represents the board's best attempt to recalculate the assessment. The calculation is as follows.

Basic site .22 Ac x \$70,000	\$15,400
Water frontage	<u>\$29,200</u>
	\$44,600
ROW adjustment	<u>x .80</u>
	\$35,680
Septic	<u>2,500</u>
Total Land	\$38,180
Building	<u>\$ 8,100</u>
Total assessment	\$46,280

Again, while the assumption of a \$70,000 base-acre value may be

inconsistent with the Town's methodology, the Town did not provide any explanation of relationship of the lot size and the \$20,000 base acre listed on the assessment-record card.

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4) The Taxpayers' appraisal indicated a November 1991, \$42,800 value. The board found the appraisal to be somewhat cursory. Nonetheless, we know another appraiser looked at the Property and at some market data and arrived at an estimate of value. The appraisal certainly lacked some specificity, but it also contained more information than the board could glean from the assessment cards.

Based on the above, the board finds the Taxpayers carried their burden, and the Town did not provide sufficient documentation to support the assessment.

If the taxes have been paid, the amount paid on the value in excess of \$46,280 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all

of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law.

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Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas E. Lamb, Taxpayer; and the Chairman, Selectmen of Milton.

Dated: October 7, 1994

Lynn M. Wheeler, Deputy Clerk