

Bruce Farr, Trustee of Farr Realty Trust

v.

Town of Weare

Docket No.: 11205-91CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$27,882 (land \$18,982; buildings \$8,900) on a 160-acre lot, of which 159.5 acres are in current use, with a camp (the Property). The Taxpayer also owns, but did not appeal, another lot in the Town assessed at \$3,300. For the reasons stated below, the appeal for abatement is granted.

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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the one-half acre lot, on which the camp sits (the Camp Site), was unreasonably assessed at \$25,000 per acre;
- (2) the Camp Site is not adjacent to a town maintained road and is only accessible by skid trails;
- (3) the Camp Site was worth \$2,400 an acre; and

(4) there was no dispute over the building value.

The Town argued the assessment was proper because:

- (1) the Camp Site was assessed at \$12,500;
- (2) the road servicing the Camp Site was in current use;
- (3) the Town adjusted the Camp Site by 50% to \$25,000 per acre because the access road to the Camp Site is approximately one-half mile long;
- (4) the camp is open for public use; and
- (5) the Property has a higher and better use than as a logging camp and a prospective buyer would view it as a camp lot.

The Town also asserted the current use (CU) assessment was incorrectly calculated and should have been \$7,698.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$19,000 (land in CU \$7,700 (rounded); Camp Site land \$2,400; building \$8,900).

This case comes down to judgement, and it was the clear and unanimous judgement of this board that the Camp Site was overassessed by the Town, and a \$2,400 assessment would be proper for that site. The site is approximately one-half mile from the Town road and is accessed only by a skidder trail/road. Thus, even with the Town's adjustments for access, the board concludes the assessment was excessive. The \$2,400 figure is a reasonable rear-acre value. We did not, however, reduce the \$2,400 by one-half to reflect the one-half acre site because we conclude the one-half acre has the value of an acre of rear land.

Additionally, we find nothing in the Taxpayer's use or development of the Property that should affect the Property's current-use status.

If the taxes have been paid, the amount paid on the value in excess of \$19,000 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, 1993 and 1994. 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 "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce Farr/Farr Realty Trust, Taxpayer; and Chairman, Selectmen of Weare.

Dated: April 6, 1995

Valerie B. Lanigan, Clerk

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