

Arthur J. and Evelyn N. Horan

v.

Town of Belmont

Docket No.: 11351-91PT

**DECISION**

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$130,400 (land, \$77,600; building, \$52,800) on 2.7-acres with building (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 denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the road in front of the house has always been paved; therefore, the increase of \$2,100 is in error;
- 2) no major improvements to the buildings have been done;

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- 3) the Property has always been residential and due to setback requirements other uses would not be allowed;
- 4) when zoning was established, the Property was placed in the commercial category;
- 5) the highest and best use for the Property is its natural state, landscaping was designed to coincide with the natural flow of runoff from the highway and surrounding areas; and
- 6) there is limited access to Route 106 only through Farrarville Road.

The Town Administrator, Frederick Welch, argued:

- 1) the \$2,100 assessment is incorrect because the Property frontage was already paved and the 5% adjustment for conversion to gravel should not have been applied; and
- 2) there appears to be some uncertainty as to whether the Taxpayers should be assessed as residential rather than commercial due to the Taxpayers problems, i.e. a flood plain zone, current ordinances, etc.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs, made an inspection of the subject property on October 26, 1993 with Mrs. Arthur J. Horan, one of the Taxpayers, and filed a report with the board (copy enclosed). 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 report in whole or in part. In this case, the board

concurs with the inspector's report.

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### Board's Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed. The Property had received a 5% reduction on the site along Farrarville Road, for location on a dirt road. However, the evidence indicates the road was always paved. The \$2,100 which was added to the 1991 assessment should have been on the original assessment because the Property never was located on a dirt road; therefore, it should not have received the 5% adjustment in the first place.

In 1990, the replacement cost of the house was increased from \$55,955 to \$58,900. It appears that a quality adjustment of -5% was removed; however, no explanation was given on the property record card. Using the 1991 Marshall & Swift pricing manual as a guideline and adjusting by the equalization rate of 1.26, the Board's review appraiser determined a replacement cost of \$59,821, which supports the replacement cost used (see attached report).

The board finds the highest and best use of the subject Property is its present use as a single-family residence based on the location of the ponds and the retaining walls. The ponds and walls do not add value to the Property, but have created an attractive area and solve much of the wetness problem, therefore no negative deduction needs to be made to account for

wetness. There is adequate space for residential expansion; however, it is unlikely that this lot would be used for commercial use.

The board rules the major issue of this appeal is the contributory value of the man made ponds located on the lot. The Taxpayers argued this

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would prevent use of the lot as a commercial property; however, it does not appear that a substantial value was added on the card. The Property's land is priced at \$28,741 per acre for 2.70 acres. The inspector's review of neighboring lots #151, #34 and #40 are also located in a commercial zone and used as residential. Neighboring lots #144 and #150 and 150-1 are located in a residential zone. A base price of \$100,000 per acre was used for the subject, while \$80,000 per acre was used for residential lots; however, the negative adjustments were greater for the subject commercial Property than the comparable residential properties. Therefore, the board finds the 1991 assessment is fair and equitable as calculated.

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level 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). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b).

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request,

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generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur J. and Evelyn N. Horan, Taxpayers; Chairman, Selectmen of Belmont.

Dated: January 4, 1994

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Melanie J. Ekstrom, Deputy Clerk

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- 5) the highest and best use for the Property is its natural state, unusable and unsalable as commercial; and
- 6) there is limited access to Route 106.

The Town argued the assessment was proper because:

- 1) the \$2,100 assessment placed for converting gravel to payment should be removed;
- 2) there appears to be some uncertainty as to whether the Taxpayers should be assessed as residential rather than commercial due to the Taxpayers problems, i.e. a flood plain zone, current ordinances, etc., however, the Town prefers a decision from the board.

The subject property had received a 5% reduction on the site along Farrarville Road, for location on a dirt road. The \$2,100 which was added to the 1991 assessment should have been on the original assessment because the property never was located on a dirt road and should not have received the 5% adjustment in the first place.

In 1990, the replacement cost of the house was increased from \$55,955 to \$58,900. It appears that a quality adjustment of -5% was removed; however, no explanation was given on the property record card. Using the 1991 Marshall & Swift pricing manual as a guideline and adjusting by the equalization rate of 1.26, I determined a replacement cost of \$59,821, which supports the replacement cost used.

Class D, Single Family Residence		
Fair Quality		\$ 34.68 per square
foot		
Area-Shape Multiplier	x 1.04	
Current Cost Multiplier	x 1.03	
Location Multiplier	x 1.00	
Equalization Ratio	<u>x 1.26</u>	
Adjusted Square Foot Price		\$ 46.81 per square foot
Usable Square Feet	<u>x 1000</u>	
First floor Replacement Cost		<b>\$46,810</b>
Low Cost Basement		\$ 10.23
Current Cost Multiplier	x 1.03	
Location Multiplier	x 1.00	
Equalization Ratio	<u>x 1.26</u>	
Adjusted Square Foot Price		\$ 13.28 per square foot
Square Feet	<u>x 912</u>	
Basement Replacement Cost		<b>\$12,111</b>
Deck Replacement Cost		<b><u>\$ 900</u></b>
Total Replacement Cost		<b>\$59,821</b>

The total depreciation of 20% seems low based on Marshall & Swift, but appropriate based on a review of the neighboring properties.

The highest and best use of this property is the current use, single-family residential, because of the location of the ponds and the retaining walls. The ponds and walls do not add value to the property, but they also solve much of the wetness problem, so that no negative deduction needs to be made to account for wetness. There is adequate space for residential expansion; however, it is unlikely that this lot would be used for commercial use.

The subject property's land is being priced at \$28,741 per acre for 2.70 acres. A review of the neighboring properties (spreadsheet attached) reveals that lot #151, the lot located across Farrarville Road also along Route 106 and owned by Linda Dalton, is assessed at \$28,633 per acre for 3.00 acres of land. This lot is the most comparable to the subject lot. Like the subject it is located in the commercial zone and used as residential. While it does not share the extensive water problem for which the pond and wall system were built, it is below street level and according to Mrs. Horan, it does get wet and the owner had installed a drainage pipe.

Lots #34 and #140, located across Route 106 from the subject, are also located in the commercial zone and used as residential. Lot #34 is fairly similar to the subject and is assessed at \$28,135 per acre for 1.85 acres of land. Lot #140 has 18.00 acres of land; the large size makes comparison difficult. Also, the value used on the spreadsheet is the appraised value; the assessed value is considerably lower as it is valued with current use. All four of the above lots are priced using \$100,000 per acre for the base site value.

Lot #144 and lots #150 & 150-1 are located in the residential zone on Farrarville Road. The base site value is \$80,000 per acre. Lot #144 is valued at \$27,450 per acre for 1.49 acres. The values of lots #150 & 150-1 have been combined for the purpose of this report. This combined lot is valued at \$14,144 per acre for 4.94 acres of land.

Based on a comparison to the Dalton lot only, it would appear that the subject is properly assessed; however, based on a comparison to the other neighboring lots, it would appear that the subject property, as well as the Dalton property are slightly overassessed. It is generally expected that larger lots will have a higher total value, but a lower value per acre than smaller lots. Lots #34 and #144 are smaller than the subject, but their value per acre is less. Lot #150 & 150-1, priced as one contiguous lot, is larger than the subject, but has a lower total value.

In 1993, the Town of Belmont revalued all properties. The subject property's assessment was dropped to \$101,960. Mrs. Horan indicated to me that the new figure was more in line with her opinion of fair market value; however, the 1991 equalized value was \$103,492. If you consider the declining markets in New Hampshire from 1991 to 1993, trending of the 1991 value to 1993 would produce a value lower than \$101,960.

**Conclusion:** Because of the uniqueness of this property and the limited amount of information supplied by either side, I do not feel that I can draw a definite conclusion about the fair market value of this property in 1991. A comparison to one neighboring lot indicates a fair assessment while a comparison to three other neighboring lots indicates over assessment. A final comparison to the new assessment for 1993 indicates under assessment.

The major issue of this appeal is the man made ponds located on the lot. I agree with the taxpayer that this would prevent use of the lot as a commercial property; however, it does not appear that a substantial value was added. It is true that a base price of \$100,000 per acre was used for the subject, while \$80,000 per acre was used for residential lots; however, the negative adjustments were greater for the subject property than the residential properties.

Very truly yours,

Scott W. Bartlett  
Board of Tax and Land Appeals  
Review Appraiser