

Justine A. Eaton

v.

Town of Dublin

Docket Nos.: 11798-91PT and 13053-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$32,900 on Lot 59-E, a vacant, 8.5-acre lot;

\$28,600 on Lot 59-C, a vacant, 15.2-acre lot;

\$32,500 on Lot 56, a vacant, 3.7-acre lot;

\$822,100 (land \$196,300; buildings \$625,800) on Lot 55, a 46.0-acre lot with a colonial house and a cape house; and

\$34,100 (land \$33,000; building \$1,100) on Lot 17, an .18-acre lot with a bath house.

and 1992 revised assessments of:

\$759 on Lot 59-E, a vacant, 8.5-acre lot in current use;

\$1,357 on Lot 59-C, a vacant, 15.2-acre lot in current use;

\$331 on Lot 56, a vacant, 3.7-acre lot in current use;

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\$753,255 (land \$99,655; buildings \$653,600) on Lot 55, a 46.0-acre lot with a colonial house and a cape house of which 37.0 acres are in current use; and

\$34,100 (land \$33,000; building \$1,100) on Lot 17, an .18-acre lot with a bath house.

For the reasons stated below, the appeal for abatements is granted.

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 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 assessments were excessive because:

- (1) the Town has added value to the land based on the premise that it could be further developed yet the Property's value would be diminished if it were developed;
- (2) the Town's determination that all of the backland had the same unit value is flawed;
- (3) the Town has not considered any functional deficiency to the house and found no economic depreciation to the second house or the guest house;
- (4) a December, 1992 appraisal estimated the fair market value as of April 1, 1991 to be \$702,000; and
- (5) a September, 1994 updated appraisal estimated the fair market value as of April 1, 1992 to be \$633,000.

The Town argued the assessments were proper because:

- (1) excess frontage in properties such as the subject always have some added value attributed for privacy, protection and future subdivision;
- (2) the Town did adjust the excess land for size variability;

(3) the Town applied an excess capacity (EC) adjustment for large estate properties ranging in size from 6,000 square feet to 10,000 square feet and the Property was allowed 2% for size;

(4) the condition of the house is exceptional; it has some water damage which is covered in the 26% depreciation applied;

(5) comparable sales support the assessments;

(6) a 6% decline in value from April 1, 1991 to April 1, 1992 is appropriate; and

(7) the Taxpayer's appraisal determines a vacant land value only and does not take into account any added value for site preparation, septic system, well, landscaping, etc.

Board's Rulings

Based on the evidence, we find the correct assessments should be as follows:

1991

Lot 59-E - No change (\$32,900)

Lot 59-C - No change (\$28,600)

Lot 56 - No change (\$32,500)

Lot 55 - \$741,900 (land \$176,600; buildings \$565,300)

Lot 17 - No change (\$34,100)

Total 1991 assessment - \$870,000

1992

Lot 59-E - No change (\$759)

Lot 59-C - No change (\$1,357)

Lot 56 - No change (\$331)

Lot 55 - \$664,955 (land \$99,655; buildings \$565,300)

Lot 17 - No change (\$34,100)

Total 1992 assessment - \$701,502

These assessments are ordered for the following reasons:

Lot 55

The board finds the highest and best use of this lot is a continuation of its existing use as an estate residence. This lot consists of a 46.0 acre tract of land with an 8,431 square foot brick "estate" type residence built in 1918, a 2,362 square foot two-family caretaker/guest house, two barns and miscellaneous outbuildings.

Although the lot is certainly large enough to subdivide and has ample road frontage, the board agrees that the property's value would be diminished if subdivided. The photographs submitted display a home of exceptional quality and character which would most likely attract a purchaser looking for privacy and solitude. The lot has exceptional landscaping and a prospective purchaser would require significant means to maintain the property. The board does not agree that a purchaser looking to buy such a substantial property would be willing to invest in this type of property if there was not significant land to support it.

The board has reviewed the photographic evidence, testimony and appraisals and concurs with the Taxpayer's appraiser that a 10% functional depreciation should be applied to the main dwelling for the reasons outlined in his report. Specifically 1) obsolescence in design and layout, 2) not designed to satisfy contemporary standards, 3) poor winterization resulting in exorbitant heating costs and 4)

continuous maintenance requirements. Note: Page 5
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The board has made these adjustments to the revised building replacement cost of \$736,448 submitted by the Town.

The board finds a 5% functional depreciation should be applied to the caretaker/guest house to reflect its obsolescence in layout and design and a 5% external depreciation should be applied for its proximity to the road.

With respect to the land value, the board does not find a frontage assessment is appropriate because the value of the privacy is captured in the condition factor for the housesite and the condition factor for the rear land. The board finds no further adjustments are warranted to the land because:

1) the Taxpayer's appraiser did not adequately adjust the sales for the estate nature of the housesite, for site preparation, well and septic. Specifically, the appraiser chose sales 8 and 9 as each were desirable homesites and contained a comparable view to that of the subject. However, the only adjustments made to the sales were for time, size and a location adjustment to comparable 8.

2) the appraiser did not consider the significant site improvements on the property. The photographs depicted a property with extensive landscaping and no adjustments were made to the sales for this improvement, and

3) the board finds the topography factor applied to be reasonable given the photographic depictions and testimony.

The board has calculated its adjustments as follows:

1991

Main House

Replacement Cost New \$736,448

Total Depreciation 38%

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Building Depreciated Value \$456,600 (rounded)

Extra Features 13,200

Total Main House Value \$469,800

Caretaker/Guest House

Replacement Cost New	\$146,869
Total Depreciation	36%
Building Depreciated Value	94,000 (rounded)
Extra Features	1,500
Total Guest House Value	<u>\$ 95,500</u>

Land

2.0 acres at \$23,000 X 1.40 X 2.50 \$ 80,500

44.0 acres at \$4,000 X .84 X .65 96,100

Total Land Value \$176,600

Total 1991 Assessment \$741,900 (land \$176,600; buildings \$565,300)

1992

Main House

Replacement Cost New	\$736,448
Total Depreciation	38%
Building Depreciated Value	\$456,600 (rounded)
Extra Features	13,200
Total Main House Value	<u>\$469,800</u>

Guest/Caretaker House

Replacement Cost New	\$146,869
Total Depreciation	36%
Building Depreciated Value	94,000 (rounded)

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Extra Features	1,500
Total Guest House Value	<u>\$ 95,500</u>

Land

2.0 acres at \$23,000 X 1.40 X 2.50	\$ 80,500
7.0 acres at \$4,000 X .84 X .65	15,300
1.75 acres at \$4,000 X .84 X .65	707 (current use value)
35.25 acres at \$4,000 X .84 X .65	3,148 (current use value)
Total Land Value	<u>\$ 99,655</u>

Total 1992 assessment \$664,955 (land \$99,655; buildings \$565,300)

Lots 59-A, 59-C, 56 and 17

No adjustment is warranted on the assessments of these lots. The board finds that these lots, all individually deeded with significant acreage, could be marketed and sold as individual building lots. The board does not find that these lots are necessary to support the estate value of Lot 55 and further finds that the sales do not support any adjustment in value.

The board rules as follows on the Taxpayer's requests for findings of fact and rulings of law:

1. Granted.
2. Granted.
3. Denied.
4. Denied.

If the taxes have been paid, the amount paid on the value in excess of \$870,000 for 1991 and \$701,502 for 1992 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

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overpayment for 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

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 George R. Hanna, Esq., Counsel for Justine A. Eaton, Taxpayer; and Chairman, Selectmen of Dublin.

Dated: February 2, 1995

Valerie B. Lanigan, Clerk

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