

Marga B. Foss

v.

Town of Hopkinton

Docket No.: 12664-91CU

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of: Map 223, Lot 1 - \$15,450 (land \$10,100; buildings \$5,350), with 49.86 acres in current use and .14 acres not-in-current-use; and Map 223, Lot 2 - \$124,000 (land \$36,250; buildings \$87,750), with 18.83 acres in current use and 1.17 acres not-in-current-use (the Property). For the reasons stated below, the appeal for abatement 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:

Map 223 Lot 1

(1) the cottage is used only for storage due to the damage to the interior by squirrels; and

(2) the \$175 per-front-foot used as the basis for the land not-in-current-use is excessive due to the rural nature of the neighborhood and the lack of services.

Map 223 Lot 2

1) the area around the house not-in-current-use should be .54 acres not the .76 acres as assessed by the Town; the area around the barn and shed not-in-current-use should be .39 acres not the .42 acres assessed by the Town;

2) the assessment on the house increased 182% from the 1981 reassessment to the 1991 reassessment; and

3) the Town's physical and functional depreciation allowed on the house actually decreased from 1981 to 1991.

The Town argued the assessments were proper because:

(1) the conservation commission was the entity that made the decision as to the size of the land not-in-current-use; the only difference between what the Taxpayers are asking for and what the Town has granted is an area 65 feet wide and 165 feet deep between the house area and the detached barn and shed;

(2) the 1981 and 1991 reassessments were done using different manuals during different market periods.;

(3) the cottage while assessed as a residential property is depreciated to the extent that it has the contributory value of a shed; and

(4) the \$175 per-front-foot used as the basis for the land not-in-current-use is excessive due to the rural nature of the neighborhood and the lack of services.

Board's Rulings

Lot 1

Based on the evidence, we find the correct assessment should be \$12,100 (land \$10,100; building \$2,000). This assessment is ordered because:

- 1) based on the testimony and evidence the "cottage" has physically deteriorated to the point that it has minimal value as a storage shed;
- 2) the Town's value of \$5,350 is excessive for its utility as a storage shed due to its condition and cottage design.

Lot 2

Based on the evidence, we find the correct assessment should be \$118,250 (land \$30,500; buildings \$87,750).

The assessment of the land not-in-current-use is revised to coincide with the area requested by the Taxpayer on her map filed with the Town which indicated an area of 142 feet by 165 feet around the dwelling and a barn lot of 110 feet square. Based on the photographs and the testimony, the board finds the area between the house lot and the barn lot was intended by the Taxpayer to be used as current-use pasture land, and, indeed, the photographs indicate the land is not groomed and maintained as part of either the house or the barn lot.

The 1991 current-use rule Rev 1204.02 pertaining to the area around buildings not-in-current-use reads:

House Lot. For purposes of this Chapter, a house lot shall consist of the land on which the building or buildings are situated together with the yards and grounds contiguous to, and groomed and maintained around the building or buildings. Except as provided under section Rev 1203.03, (c), the dimensions of the house lot shall not be governed by local municipal ordinances, planning board requirements, or local zoning ordinances.

The board has recalculated the land not-in-current-use using the appropriate excess frontage and undeveloped adjustments contained in the New Hampshire Appraisal Manual used by the Town during their last revaluation. The current use permanent pasture category was increased by .25 acre and valued in keeping with the other permanent pasture land.

The board finds no further abatement is warranted for the following reasons:

1) The Taxpayer did not submit any market evidence to refute the \$175 per-front-foot base used by the Town in the more rural areas during the last reassessment. The board would note for the Taxpayer's benefit that while the \$175 is the starting value for the Taxpayer's property and other properties in the immediate neighborhood, the final value per-front-foot for the land not-in-current-use is in the \$40 per-front-foot range after all the adjustments for topography, depth, excess frontage, undeveloped have been accounted for;

2) The difference in the physical and functional depreciations on the buildings between the 1981 reassessment and the 1991 reassessment is not conclusive evidence of disproportionate assessment. Assessments all must be related to market value (RSA 75:1), and it is very conceivable that the market for the Taxpayer's Property was different in 1991 from what it was in 1981;

3) To show the Town's estimate of market value was improper by using a replacement cost new less depreciation approach, the Taxpayer needed to make a showing of the Property's fair market value. However, the Taxpayer did not present any credible evidence of the Property's fair market value. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great

126 N.H. at 217-18.

If the taxes have been paid, the amount paid on the value in excess of: Lot 1 \$12,100 and Lot 2 \$118,250 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 relative to the assessment of the land not-in-current-use 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 and the current use rules. 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 in 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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 Marga B. Foss, Taxpayer; and Chairman, Board of Selectmen of Hopkinton.

Dated: June 8, 1995

Valerie B. Lanigan, Clerk

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ORDER

On June 21, 1995 the "Town" filed a request for correction of the board's June 8, 1995 decision (decision).

The board grants the request and amends its decision as follows.

The "Taxpayer's" fourth argument for Lot 2 was inadvertently inserted under the Town's summary of arguments. Therefore, page 2 of the decision should read:

... "3) the Town's physical and function depreciation allowed on the house actually decreased from 1981 to 1991; and

4) the \$175 per-front-foot used as a basis for the land not-in-current-use is excessive due to the rural nature of the neighborhood and the lack of services."

Further, the decision on pages 3 and 5 referenced an original assessment rather than the revised assessment. Therefore page 3 is amended to read:

... "Board's Rulings

Lot 1

Based on the evidence, we find the correct assessment should be \$10,500 (land \$8,500; building \$2,000)..."

Page 5 is amended to read:
"If the taxes have been paid, the amount paid on the value in excess of: Lot 1 \$10,500 and Lot 2 \$118,250 shall be refunded with interest at six percent per annum from date paid to refund date..."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Marga B. Foss, Taxpayer; and Chairman, Board of Selectmen of Hopkinton.

Dated: July 26, 1995

Melanie J. Ekstrom, Deputy Clerk