

Paul A. and Barbara J. Vincent

v.

Town of Westmoreland

Docket No.: 12840-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$203,400 (land \$67,900; buildings \$135,500) on a 2.2-acre lot with a house (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 assessment was excessive because:

- (1) half the land is unusable because it is sloping, low and wet and the Town assessed the Property with a view, yet there is no view;
- (2) the Property's proximity to Highway 63 and the abutting sandbanks

detracted from its value;

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(3) the Property was not assessed consistently with neighboring lots and the Town neglected to consider certain factors in the assessment, i.e., topography, the neighborhood, and the abutting lots;

(4) just because all properties were assessed "consistently" does not mean the assessments were accurate;

(5) the Town assessed the entire Property by viewing only the frontage through a car window;

(6) properties with better views had lower view factors and land assessments;

(7) since the Town reduced the land assessment to \$58,300 in 1993, they must agree the assessment was excessive in 1992; and

(8) the land assessment should be \$37,163.

The Town argued the assessment was proper because:

(1) the assessment has remained the same since the 1989 revaluation figure -- the tax rate increased from \$14.00 to \$21.72, which increased the taxes;

(2) the \$17,000, per-acre price was applied consistently to the Property and the surrounding lots; and

(3) the Property is located in a scenic area of the Connecticut River Valley.

#### Board's Rulings

Based on the evidence, the board finds the condition factor (1.5) for land, as applied by the Town in tax year 1993, should also be used to arrive at the proper 1992 assessment. The 1.5 adjusted condition factor for land compensates for the Taxpayers' limited view and wet meadowland condition. The

correct 1992 assessment is: total, \$193,800 (land, \$58,300; building, \$135,500).

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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).

If the taxes have been paid, the amount paid on the value in excess of \$193,800 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 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 "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.

Thus, new evidence and new arguments are only allowed in very limited

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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

\_\_\_\_\_  
George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul A. and Barbara J. Vincent, Taxpayers; and the Chairman, Selectmen of Westmoreland.

Dated: December 29, 1994

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Lynn M. Wheeler, Deputy Clerk