

Marion W. Best

v.

Town of Wilmot

Docket No.: 12861-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$334,070 (land, \$43,070; building, \$291,000) consisting of 55.4 acres with a dwelling and attached garage. 53.5 acres were assessed in current use for \$1,070 and the 1.9 acre housesite was assessed for \$42,000. Without current use assessment, the total assessment would have been \$389,500.

The Taxpayer 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 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 land was purchased for \$105,000 in November, 1990 and the home was

built for \$229,000 in 1991 excluding appliances, site work and project manager's fee;

- 2) an appraisal dated January 15, 1992 estimated a fair market value of \$270,000 based on three comparables and replacement cost;
- 3) the Town incorrectly calculated the square footage of living area; and
- 4) because the Town's standard methodology is difficult to apply to the house's unique design.

The Town argued the assessment was proper because:

- 1) Taxpayer's Property is superior and has a magnificent view of Mount Kearsarge and down the valley towards Potter Place, New London and Sutton;
- 2) the best evidence of market value of the subject Property were two sales (McAllister & Sullivan);
- 3) four comparably assessed properties indicate consistency was achieved in assessing properties throughout the Town;
- 4) Taxpayer's appraisal should carry little weight because 2 out of 3 "comparable sales" were not in the same town and because the building's construction quality is better than average;
- 5) the cost approach in the Taxpayer's appraisal estimated a value of \$321,000, if which equalized, indicates an assessment of \$353,100;
- 6) Taxpayer's improvements were valued using the same methodology as all other properties throughout the Town;
- 7) Taxpayer's garage was computed as an unfinished area;
- 8) upon review at the local level, the building's quality adjustment was revised to A6; and

9) the Taxpayer has failed to show any significant errors in the physical description of the Property or prove any disproportionality existed.

The Taxpayer in her rebuttal stated:

- 1) the system used by the Town was based on historical data and would only work if the property being appraised was reasonably similar to properties used in developing the historical base;
- 2) the Property has a partial, seasonal view of Mount Kearsarge and it is physically impossible to see Potter Place, Sutton and New London;
- 3) the two sales used by the Town sold 11 and 20 months prior to the assessment date and, if they were used, the subject Property is assessed \$100,000 more than the comparables;
- 4) the four assessment-record cards submitted by the Town demonstrating consistency, only indicates the results of the Town appraiser's system, not necessarily their market values; and
- 5) the appraiser noted within the appraisal that it was necessary to go outside the Town to find comparables and made necessary adjustments.

Board Findings

Based on the evidence, we find the correct assessment should be \$303,570 (land \$43,070; building \$260,500). In arriving at this decision the board analyzed and considered the Town's assessment-record card, the Taxpayer's appraisal, and the written submittals of both parties.

Specifically, the board finds:

- 1) the contributory value of the cathedral ceiling area of the dwelling and the second floor of the garage are not as great as the Town's cost approach

determined;

Page 4

Best v. Wilmot

Docket No.: 12861-92PT

2) a review of garage costs in the Marshall and Swift residential cost handbook indicates that the Taxpayer's attached garage would have a replacement cost of approximately \$14,000 - \$15,000 as opposed to the nearly \$26,000 contributory value assessed by the Town;

3) consequently, the Town's building replacement cost should be adjusted by an additional 10% for the second story cathedral ceiling area and the excessive garage value; and

4) the resulting assessed value of \$359,000 (without current use consideration) indicates a 1992 market value of \$326,360 by applying the Town's 1.10 equalization ratio ($\$359,000 \div 1.10$).

No further abatement is warranted because:

1) the board finds the Taxpayer's appraisal which indicated a full market value of \$270,000 did not adequately adjust for the excess land of the subject Property, the quality of the square-footage of the Property, the attached garage and the finished basement area;

2) if the proper adjustments are made to the Taxpayer's three comparable sales, the indicated value ranges from approximately \$297,000 to \$315,000 (this value range is quite close to the board's indicated market value); and

3) further, the board gives some weight to the evidence of the Taxpayer's cost to purchase and develop the Property in 1990 and 1991 (\$105,000 for the land plus \$229,000 to construct the home excluding site work and the project manger's fee.)

In summary the board finds the assessment with current use is calculated as follows:

Land	\$ 43,070
Building	<u>\$260,500</u>
Total	\$303,570

If the taxes have been paid, the amount paid on the value in excess of \$303,570 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 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.

Page 6
Best v. Wilmot
Docket No.: 12861-92PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Marion W. Best, Taxpayer; and Chairman, Selectmen of Wilmot.

Dated: December 30, 1994

Melanie J. Ekstrom, Deputy Clerk

0006