

**Franklin-Carroll Corporation**

**v.**

**Town of Whitefield**

**Docket No.: 14607-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessments on the following "Properties."

<b>Lot No.</b>	<b>Assessment</b>	<b>Description</b>
31	\$422,421	a 198.3-acre lot, of which 159.83 acres are in current use, containing the Mountain View House Hotel
31-1	\$16,600	a vacant, 2.98-acre lot
32	\$379,908	a 155.79-acre lot, of which 122.15 acres are in current use, containing a country club
32-1	\$205,400	a 2.51-acre lot with a house

For the reasons stated below, the appeal for abatements is granted in part and denied in part.

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).

## **Taxpayer's Arguments**

The Taxpayer argued the Properties' assessments were excessive because:

- (1) the Properties have not been used as a hotel since 1985;
- (2) the outbuildings have little to no value;
- (3) the main building suffers from substantial deferred maintenance;
- (4) rehabilitating the main building to reopen would not be financially feasible;
- (5) the Properties have been listed for sale for \$1,200,000 for the last six years;
- (6) the golf course is obsolete because it is only a 9-hole course and there are other 18 and 27 hole courses nearby; and
- (7) the Taxpayer would sell the Properties, including the current-use land but not including the house (map 14 lot 32-1), for \$600,000.

## **Town's Arguments**

The Town argued the Properties' assessments were proper because:

- (1) the main building was not assessed because of problems with rehabilitating the building;
- (2) the Properties are located in the vicinity of ski areas, lakes and other recreational areas, and the Properties have noteworthy views;
- (3) the assessments were arrived at based on the sales and analysis done for the revaluation; and
- (4) the building assessments reflected significant adjustments for various factors.

### **Board's Rulings**

Based on the evidence, the board finds as follows:

1) **Lot 31** - abatement granted to an assessment of \$312,821, which was calculated by placing no value on any building except the dance hall, garage, dormitory (card 3 of 7), cottages, barn, and tennis courts with an additional deduction for demolition costs of buildings;

2) **Lot 31-1** - denied;

3) **Lot 32** - granted to \$365,500, which was calculated by deducting the assessments on the pool and the pump house; and

4) **Lot 32-1** - denied.

After the hearing the board decided a view would assist it in deciding this appeal. Based on that view, it was obvious that any prospective purchaser of the Properties would not place value on all of the buildings that were on Lot 31. Additionally, the board concluded that some additional adjustment for demolition costs was required given the size, condition and number of buildings on Lot 31.

### **Lot 31-1 and Lot 32-1**

The board will first address the denial of abatements on Lot 31-1 and Lot 32-1. The appeal on Lot 31-1 is denied because the Taxpayer did not present any evidence of overassessment of this lot. Concerning Lot 32-1, the Taxpayer did not show the \$205,400 assessment was excessive, especially considering the Taxpayer sold the Property in October 1995 for \$225,000.

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**Lot 31**

The board decides to place no assessment on any building except as follows.

<u>Building Assessments</u>		<u>Card</u>
dance hall	\$ 57,000	(1 of 7)
garage	z \$ 6,300	(2 of 7)
dormitory	\$ 11,500	(3 of 7)
cottages	\$ 1,800	(5 of 7)
barn	\$ 17,100	(6 of 7)
<u>tennis courts</u>	<u>\$ 14,900</u>	(7 of 7)
Building Total	\$108,600	

Adding this adjusted building assessment to the land assessment results in the following.

Land Assessment	\$285,921
<u>Building Assessment</u>	<u>\$108,600</u>
Total Assessment	\$394,521

The board then calculated a demolition cost by: (a) first determining the total square footage to be demolished; (b) multiplying that by the \$1.25 per-square-foot demolition costs as submitted by the Town; and (c) adjusting that total demolition cost by the \$51,000 demolition costs that were already deducted from the land assessment. This calculation is as follows.

Hotel	95,200 sf
<u>Dormitories</u>	<u>10,930 sf (7,210 sf; 1,920 sf; 1,800 sf)</u>
Total	106,130 sf

$106,130 \times \$1.25/\text{sf} = \$132,700$  total demolition costs

\$ 132,700
<u>\$- 51,000</u> demolition costs in land assessment
\$ 81,700 additional demolition costs
\$ 394,521 revised assessment before additional demolition costs
<u>\$- 81,700</u> additional demolition costs
\$ 312,821 final revised assessment

### **Lot 32**

The board reduces the assessment to \$365,500, which was calculated simply by deducting the assessments on the pool and the pump house.

### **General Observations**

Arriving at a proper assessment for these Properties is difficult. Additionally, in tax appeals, the taxpayer has the burden of proof to show overassessment. The Taxpayer in this case did a woeful job of carrying its burden. It did not present any market information whatsoever; it did not present any development plan or marketing plan whatsoever; it did not present any engineering or demolition costs estimates whatsoever. Simply put, the Taxpayer presented nothing but conclusory statements that were unsupported by any valuation evidence. Moreover, the Taxpayer continued to snipe at the Town for the Taxpayer's perception of the Town's performance. But the Taxpayer did not back up these attacks with documentation or evidence of market value.

One could have argued that this case should have been simply denied due to the Taxpayer's almost complete failure to prepare and present a case to this board. Nonetheless, the board is concerned with fair assessments and in some cases, see Appeal of Sokolow, 137 N.H. 642 (1993), the boards is even obligated to review the evidence and grant an abatement to a taxpayer who has otherwise failed to carry its burden of proof.

In this case, the board viewed the Properties with the parties and with the board's inspector. It was obvious that despite the Taxpayer's failure to present a solid case, the Properties spoke for themselves. The board could

not ignore what it saw on the view. The hotel and most supporting buildings have obviously seen their best days. Any development of the Properties would require substantial demolition costs.

The board fully understands the Town's frustration with this Taxpayer and the Taxpayer's failure to take a positive and productive approach to this appeal. Nonetheless, the board concludes it cannot simply deny the appeal based solely on the Taxpayer's lack of preparation and sometimes vexatious behavior. Again, the Properties spoke loudly that some adjustments were required.

### **Refund**

If the taxes have been paid, the amount paid on the value in excess of Lot 31 \$312,821, Lot 31-1 \$16,600, Lot 32 \$365,500 and Lot 32-1 \$205,400 for a total of \$900,321 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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.

### **Rehearing Procedure**

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

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Franklin-Carroll Corporation, Taxpayer; Chairman, Selectmen of Whitefield; and Michael B. Martell, Agent for the Town of Whitefield.

Date: May 22, 1996

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Valerie B. Lanigan, Clerk

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**ORDER**

This order responds to the "Town's" reconsideration motion, which is denied. The motion failed to establish the board's decision was erroneous in fact or law. See RSA 541:3.

This appeal was originally heard by Chairman Twigg and Member MacLellan. Chairman Twigg retired before the rehearing motion was filed. Present Chairman Paul B. Franklin participated in deciding this rehearing motion. Chairman Franklin reviewed the record, including listening to the hearing tape and reviewing the exhibits.

The board concludes the decision adequately addresses the arguments in the motion, except for one point of clarification. In the motion, the Town stated that it did not think the property owner would sell the property for \$600,000. Under the decision, the property still owned by this "Taxpayer" had an equalized value of approximately \$675,000. Additionally, this figure did not include ad valorem assessments on the land in current use. If the equalized assessment was calculated using ad valorem assessments, as adjusted by the decision, the property's value would be far in excess of the assessed \$600,000.

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Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I certify that copies of the within Order have this date been mailed, postage prepaid, to Franklin-Carroll Corporation, Taxpayer; Michael Martell, Department of Revenue Administration; and Chairman, Selectmen of Whitefield.

Date: July 29, 1996

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Valerie B. Lanigan, Clerk

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