

**Betty W. Barenholtz**

**v.**

**Town of Marlborough**

**Docket No.: 15069-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments on two parcels: \$240,400 (land \$29,100; buildings \$211,300) on Map 5, Lot 116/121 (Lot 121) and \$29,654 (land \$18,954; buildings \$10,000) on Map 5, Lot 122 (Lot 122). Lot 121 consists of 14 acres (12 in current use) and a dwelling and garage. Lot 122, across Route 124, consists of 8.95 acres (6.95 acres in current use) and a barn. (the Properties). 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 assessments were disproportionately high or were unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the

Taxpayer must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessments were excessive because:

- 1) the total equalized assessment for both parcels was \$373,176;
- 2) the Property is overimproved for the neighborhood;

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- 3) they are disproportionate compared to other similar properties in Town (overgraded, no view, less square footage and acreage); and
- 4) the total market value for the Properties as of April 1, 1994 should have been \$240,000 based on an appraisal prepared by Monadnock Appraisal Company.

The Town argued the assessments were proper because:

- 1) the Taxpayer is incorrect on certain arguments (total equalized assessment, square footage);
- 2) the Taxpayer failed to adjust for the physical and functional depreciation;
- 3) the Taxpayer's assessment figure for parcel 3-9 is incorrect;
- 4) the Taxpayer's appraisal is flawed, dismisses the frontage and opines the subdivision and development would be a detriment to value, comparable 1 was an estate sale; comparable 2 was only on the market for 31 days; and comparable 3 needed extensive renovations and updating to be comparable to the Taxpayer's Properties; and
- 5) the Taxpayer has failed to support any overassessment.

The Taxpayer and Town submitted rebuttals to the original arguments presented which the board has read and considered.

**Board Findings**

Based on the evidence submitted, the board finds the proper assessments should be: Map 5, Lot 116/121 building \$163,400, land not in current use (NICU) \$24,000, land in current use (CU) \$5,100 (total \$192,500); Map 5, Lot 122 buildings \$10,700, land NICU \$16,000, land CU \$2,954 (total \$29,654).

At the board's direction, the board's review appraiser reviewed the file, inspected the Properties and filed a report. The parties were given 20 days to file any comments on the board's review appraiser's report. It should be noted that the review appraiser's report is not an appraisal. The board has reviewed the report and gives the report the weight it deserves as it would any other piece of evidence submitted.

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For each of the Properties under appeal, there are three areas that need to be addressed, the value of the land in CU, the value of the land NICU and the value of the buildings.

The board concurs with its review appraiser that the most appropriate way to review this case is to compare the values for the properties' NICU portions as submitted by the Taxpayer versus the value of the properties NICU as indicated on the assessment-record cards. The board addressed the three categories used to determine the overall value of the Properties.

#### Land in CU

The total area of the Properties is 22.95 acres of which 18.95 acres is restricted through a current use lien. Both Properties have retained two acres of land NICU. The ad valorem assessment of the land in CU is not an issue here as the Taxpayer is not aggrieved for those portions of the Properties in

current use. Therefore, the board did not adjust the Town's values for the land in CU. The Town's assessor, Mr. Rubeor, in an undated letter to Mr. Byron, the Administrator for the Town of Marlborough, discussed the two main issues that the assessor had with the appraisal done by the Taxpayer's appraiser. The first issue discussed the amount of frontage contained in the two Properties and the question of subdivision potential. As previously stated, due to the encumbrance of the current lien, the subdivision potential and the valuation of this portion of the Properties is mooted.

#### Land NICU

The Town and the Taxpayer submitted the assessment-record cards for the two Properties under appeal. A review of the assessment-record cards indicates that two acres in each parcel has been treated as land NICU. Neither party submitted evidence contesting or discussing the assessed value of the portion of the Properties NICU. Hence, the board used the values as indicated on the assessment-records cards as correct for these areas.

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#### Buildings

The board reviewed the assessment-record cards for both Properties and found that there was insufficient evidence submitted contesting the assessed value placed on the barn/garage on map 5, lot 122. Therefore, the board used the value of the improvements on map 5, lot 122 as they are depicted on the assessment-record card.

Accordingly, the board reviewed the assessment-record card for map 5, lot

116/121 and found that some adjustments to the buildings' valuations were warranted. The review appraiser indicated in his report that the Town had incorrectly indicated the number of stories at two and one-half for the front section and one and one-half for the rear section of the dwelling. In actuality, the front section had only two stories and the rear section only one. The board found the assessor had incorrectly used the area of the various sections of the building when selecting cost factors from the DRA manual. The assessor should have used the combined footprint of the entire ground floor area when selecting the cost factors. After reading the Taxpayer's appraisal and the review appraiser's report, the board finds that an increase in the adjustment for functional depreciation to 20% is warranted on the dwelling due to its proximity to the road and the condition of the fireplaces. The board also has some concerns that the various sections of the dwelling may be overgraded but any overgrading is corrected by the increased functional depreciation adjustments. The board also found that the garage was overgraded and added a 10% adjustment for functional depreciation.

Consequently, utilizing the correct number of stories and the corresponding cost factors from the DRA manual as well as the Town's additions and deductions to the base costs as indicated on the assessment-record card the undepreciated cost for the dwelling is \$157,000. To this number the physical and functional depreciation factors must be applied. To this figure must be added the assessment of the breezeway, the attached shed and the revised assessed value for the garage that includes the additional functional depreciation. The resulting

value must then be multiplied by the local multiplier. The end result of these calculations is an assessment for the improvements on map 5, lot 116/121 of \$163,400.

The second issue raised by the Town's assessor, Mr. Rubeor, in his letter to the Town administrator, Mr. Byron, was that the comparable sales as employed by the Taxpayer's appraiser were not appropriately described. However, the board found that the Taxpayer's appraiser had good, first-hand knowledge of the comparable sales due to the fact that he had appraised each of them individually, and, therefore, had done thorough interior and exterior inspections of each comparable. In the Taxpayer's appraisal, the appraiser indicated that he had considered some of the extenuating circumstances of comparable sale #2 in his reconciliation of the final value. A review of the appraised values and the selling prices for each of the comparable sales utilized by the Taxpayer's appraiser indicates to the board that these sales were reasonably similar to the Properties under appeal.

In its final determination of the proper assessment for the Properties, the board reviewed all the evidence submitted by both parties including the Taxpayer's appraisal, the board's review appraiser's report and the comments from the Town's assessor. For the reasons previously discussed, the board found that some adjustments were warranted. Further, the equalized value of the ad valorem portions of the revised assessment ( $\$214,100 \div .92 = \$232,717$ ) is within 5% of the Taxpayer's appraiser's value for those portions ( $\$221,050$ , see page 4 of Bartlett report).

There were assessments of other properties that were submitted for the board's review. However, the board was not given sufficient evidence in these submissions and did not rely upon them in the final estimate of the proper assessments.

If the taxes have been paid, the amount paid on the value in excess of \$192,500 for Map 5, Lot 116/121 and \$29,654 for Map 5, Lot 122 shall be refunded with interest at six percent per annum from date paid to refund date.

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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 1995 and 1996. 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 thirty (30) 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. This, 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. 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

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

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**Certification**

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

Date: July 11, 1997

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Valerie B. Lanigan, Clerk

Betty W. Barenholtz

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ORDER

During the board's deliberations of this appeal, the board has determined it will have its appraiser (RSA 71-B:14) review the file, the parties' submittals, inspect the property and submit an opinion of value to the board as part of the record (RSA 541-A:31 VI (h)). The board's appraiser, Mr. Bartlett, will be contacting the taxpayer to obtain access to the property shortly.

After Mr. Bartlett submits his report to the board, copies will be provided to the parties and they will have 20 days to file any comments relative to his report before the board continues its deliberations.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Douglas S. Ricard, Member

Certification

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

Date: March 12, 1997

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Valerie B. Lanigan, Clerk

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