

John Whittier

v.

Town of Rumney

Docket No.: 15086-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment of \$36,850 (land \$19,550; buildings \$17,300) on a .12-acre lot with a cottage (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or was 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 Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the land value is too high;
- (2) Lots #70, #71, #72, and #74 are not true comparables as stated by the Town

due to the presence of underground utilities, paved roads and 14 acres of land that provide a buffer zone between the RV park;

(3) there is a RV park behind the Property;

(4) there is a summer camp for children as well as a conference center that have access rights to the amenities of the swimming pool and tennis courts

before the Taxpayer; and

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(5) and the market value for the Property should be \$22,000 to \$25,000.

The Town argued the assessment was proper because:

(1) the size adjustment chart for the New England Bible Conference neighborhood indicates the Property may be underassessed;

(2) the Taxpayer's appraisal considered the effective value of the site to be \$9,000; and

(3) the three sites identified in the Taxpayer's appraisal as being for sale for \$5,000 each are unbuildable and not comparable to the Property.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$32,800 (land \$15,500, buildings \$17,300). This assessment indicates an estimated market value of approximately \$26,000 by applying the Town's 1994 equalization ratio ($\$32,800 \div 1.26$).

The board concurs with the Town and Taxpayer that there is a paucity of sales data in the Town of Rumney and more specifically in the Rumney Bible Conference for properties similar to the Property.

The Taxpayer presented an appraisal prepared with an effective date of April 1, 1994 that estimated the market value of the Property to be \$26,000. The board gives some weight to this appraisal. The appraiser estimated the

site value to be \$4,000 and presented sales data to support this conclusion. In addition, the Taxpayer provided the Board with a warranty deed from a land sale that occurred in the Rumney Bible Conference indicating a selling price of \$7,500. The Taxpayer stated this was the highest selling price for an unimproved lot in the compound and the Town did not dispute this evidence.

The Town referred to several sales of improved properties that had occurred in the newer "Sugarbrook" section of the Rumney Bible Conference. Sugarbrook is a more secluded section of the compound and has underground utilities, paved roads and some vacant common land that provides a buffer zone from adjoining properties. Using the verified sales prices of the Sugarbrook properties, the town extracted the values of the land and building components

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of each sale. These residual land values conflict with the values for sales of land only properties as listed in the taxpayer's appraisal and as indicated in the warranty deed provided. While some difference may be warranted for "site" work involved in developing a lot, the Taxpayer's Property and other similar properties in the older area of the development have minimal site work. Further, the one sale of an "older" camp (Taylor Lot 8-31) occurred in 1989 and appears to be an anomaly when compared to both the sales of better properties in "Sugarbrook" and to how it was assessed compared to its sale price (\$39,100 versus \$50,000).

Findings of Fact and Rulings of Law

The board responds to the Town's request for findings as follows. In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny; or
- d. the request was irrelevant.

Findings of Fact

- 1) Granted.
- 2) Neither granted nor denied.
- 3) Neither granted nor denied.
- 4) Granted.
- 5) Granted.
- 6) Denied, "Owned by Charles and Elizabeth Atwater" not Frank Acardy.
- 7) Neither granted nor denied.
- 8) Paragraph #8 omitted in Town's document.

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- 9) Neither granted nor denied.
- 10) Denied.
- 11) Neither granted nor denied.
- 12) Neither granted nor denied.
- 13) Denied.
- 14) Denied.

Rulings of Law

- 15) Granted.

16) Denied.

Refund

If the taxes have been paid, the amount paid on the value in excess of \$32,800 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, 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.

Rehearing

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

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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

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John Whittier, Taxpayer; Daniel D. Crean, Esq., Counsel for the Town of Rumney; and Chairman, Selectmen of Rumney.

Date: January 15, 1997

Valerie B. Lanigan, Clerk

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