

Gerald and Deanna Carvin, Docket No.: 16300-95PT
Marianne Witherby, Docket No.: 16301-95PT
Arnold and Anna Livshin, Docket No.: 16302-95PT
William and Mary Phelan, Docket No.: 16303-95PT
Ralph and Kari Wilbur, Docket No.: 16304-95PT
Frederick and Susan Reuter, Docket No.: 16305-95PT
Barry and Lucy Danzig, Docket No.: 16306-95PT
Jeanne Mitchell, Docket No.: 16307-95PT
Leonard and Dorothy Tamasi, Docket No.: 16308-95PT
Ralph and Paula Gilbert, Docket No.: 16309-95PT
Charles and Patricia Stevenson, Docket No.: 16310-95PT
Helen McLean, Docket No.: 16311-95PT
William and Tina Pauley, Docket No.: 16312-95PT

v.

Town of Campton

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessments on the following "Properties."

Taxpayer	Map/Lot #	Assessment	Property Description
Carvin	4/003.17	\$ 157,300	1.14-acre lot with a single-family home
Witherby	5/017.31	\$ 162,400	1.10-acre lot with a single-family home
Livshin	4/001.06	\$ 126,200	1.18-acre lot with a single-family home
Phelan	11/006.01	\$ 165,300	1.13-acre lot with a single-family home
Wilbur	5/002.08	\$ 111,700	1.06-acre lot with a single-family home
Reuter	10/003.02	\$ 170,400	1.02-acre lot with a single-family home
Danzig	5/17.28	\$ 129,300	1.28-acre lot with a single-family home

Mitchell	10/001.13	\$ 150,600	1.07-acre lot with a single-family home
Tamasi	5/003.35	\$ 217,400	11-acre lot with a single-family home
Gilbert	4/002.09	\$ 134,300	1.20-acre lot with a single-family home
Stevenson	5/003.10	\$ 140,100	1.14-acre lot with a single-family home
McLean	5/001.10	\$ 124,700	.27-acre lot with a single-family home
Pauley	4/003.04	\$ 142,800	1.16-acre lot with a single-family home

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The Properties are in Waterville Estates, a village district in the Town of Campton with some amenities and with views of the White Mountains. These appeals were consolidated for hearing. For the reasons stated below, the appeals for abatement are granted to the Town's recommended assessments for 1996.

The Taxpayers have the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The board received sufficient evidence from both sides to warrant adjusting the assessments.

The Taxpayers presented an assessment report that detailed the Taxpayers' arguments and analysis. The Taxpayers generally argued the assessments were excessive because:

(1) the Properties' are subject to both the Town taxes and the precinct taxes, resulting in an overall full-value tax rate of \$53.61 (Town \$34.57 plus district \$19.04);

- (2) there have been several foreclosure sales in Waterville Estates; and
- (3) a comparison of sales with each appealed property demonstrated overassessment.

The Taxpayers also presented their disagreements with the Town's presentation.

The Town stated:

- (1) a ratio study of Waterville Estates sales showed the assessments were not that far off;
- (2) there may have been a problem with the assessments based on various comments and opinions;
- (3) the heavy tax burden adversely affected the Properties' values;

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- (4) lots were selling for \$6,000 but site costs were approximately \$15,000 to \$20,000, which might warrant making downward adjustments to the land assessments; and
- (5) the Properties' assessments should not be adjusted because individual properties should not be adjusted without adjusting all other similar properties.

The Town also discussed its disagreement with the Taxpayers' presentation.

At the hearing, information on one Property was presented first by the Taxpayers' agent then the Town made its presentation on the same property, concluding with the Taxpayers' agent rebutting any new information presented by the Town

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as

follows.

Taxpayer	Revised Assessment
Carvin	\$143,400
Witherby	\$153,200
Livshin	\$126,200
Phelan	\$155,350
Wilbur	\$101,850
Reuter	\$156,550
Danzig	\$122,350
Mitchell	\$143,600
Tamasi	\$205,650
Gilbert	\$124,200
Stevenson	\$128,100
McLean	\$113,650
Pauley	\$132,800

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The board makes these assessment adjustments for the following reasons.

1) The overall full-value tax rate of \$53.61 (1995) had an adverse effect on the Properties' values. The full-value rate for properties in the Town, but not in this district, was \$34.57 per thousand. The county rate averaged \$25 per thousand. These very high rates paid by these Properties would adversely affect values. The Town asserted the substantial rates were not in effect in 1995, but the board reviewed the district rate for 1993 to 1996, and the rate has always been substantial.

2) The selling and listing prices of lots and homes supported an assessment reduction. Even the Town admitted that vacant lots were selling for approximately \$6,000 with approximately \$15,000 to \$20,000 in site improvements or \$21,000 to \$26,000 for a developed site. The equalized land assessments (excluding Tamasi) were approximately \$22,000 to \$44,000. One group of Properties had an equalized land assessment of approximately \$25,000, and another group had an equalized land assessment of approximately \$37,000. In a broad sense, this comparison supports the Town's comments that the land assessments probably warrant an adjustment.

3) The Town's recommended assessment adjustments for 1996 appear to be an attempt to address the overassessment at Waterville Estates. Again, the Town argued the adjustments were not warranted for 1995 because all of the properties in Waterville Estates were not adjusted, but the board concludes revised assessments are warranted for the appealed Properties. In addition to an overall land assessment adjustment, the Town also made some property-specific adjustments.

4) The Taxpayers' agent presented some information that raised questions about the assessments, but the board could not adopt the agent's recommended values.

In general, the board had concerns with the Taxpayers' agent's, Kathleen Collins' (Collins), general knowledge of the market and the thoroughness of her research and analysis contained in her report. Because of these concerns,

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the board was unable to find the Taxpayers carried their burdens in proving the assessments should be revised to those recommended by Collins. The board

concerns were as follows.

a) Collins did not thoroughly inspect the Properties. Collins did not view the interior of the 13 appealed Properties. She also did not obtain interior views of approximately 14 comparable sales that she used in her market analysis. Collins' physical descriptions of the Properties were primarily drawn from the assessment-record cards and exterior viewing of the Properties. Her source of market data was primarily talking with realtors and the owners of the Properties. An example of Collins' lack of thoroughness is shown in the Gene Mitchell appeal where her knowledge of the purchase of the property by Mitchell was based solely on Mitchell's statements to her. Collins also had not reviewed the assessment-record card, which had the correct date and sale price. Collins failed to review the deed or other public records to verify her clients' statements.

b) Collins' appraisal judgement and thoroughness of research was limited. In several instances, the board was concerned with what appeared to be selective presentation of market data while excluding other information. One example of this was the sale of the comparable on Hodgman Hill Road (Rattlesnake Mountain Properties to Reinstein). Collins testified to the December 1993 sale was for \$85,000, but she omitted to discover that the purchaser also had to pay over \$21,000 in back taxes to acquire clear title to the property. Only after the Town noted the issue of back taxes did Collins note that the property resold 3 years later in October of 1996 for \$94,000. Another example of lack of thoroughness was in the Tamasi appeal. Collins argued that the land valued could be estimated based on a sale of map 5, lot 12.15 in September 1995 for \$15,000. What she omitted to be aware of and consider was the purchase of the adjoining parcel earlier in January 1995 by the same individual of 11.31 acres for \$48,000. Further, in her argument that

the \$15,000 was an appropriate value to use in valuing the Tamasi property,

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she was not forthcoming with describing the significant view that the Tamasi property has versus the parcel that sold for \$15,000. These examples are not exclusive but simply highlight the serious lack of thoroughness in Collins' research and flaws in her analysis that raised questions about the reliability of her value conclusions.

c) Collins also failed to make adjustments to the comparables for differences in features, e.g., size. The board also finds Collins did not support her claims that the Waterville Valley Estates market does not recognize significant building features such as differences in gross living area, basement finish area, garages, decks and porches, etc. Some markets may recognize these features on a market basis more significantly than other markets. But to argue that these features have no effect on value, as Collins did, requires a documented analysis of paired sales or other similar procedures to support such an extreme claim. None was presented by Collins, and her reason for lack of adjustment for these features was based on her judgement and her interviews with realtors. Likewise, the adjustments that Collins made for views and furniture were also not substantiated based on any direct market extraction or analysis. Collins stated that her furniture adjustments were based on statements from the buyer or seller about what the furniture contributed to the sale apparently these parties used estimated purchase costs. In the board's experience, furnishings do not contribute to the sales price nearly the replacement costs of the furnishings. Collins' argument (replacement costs equals contributory value) is inconsistent with

her other argument that the Town's depreciated cost approach for the building is not reflective of market for the building. One can reasonably assume replacement cost is similarly not reflective of the market for used furniture either.

d) The sales that existed and were generally chosen by Collins were, in most cases, smaller than the appealed Properties. While apparently size was not a factor that Collins thought the market recognized, the board finds her

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choice of comparables could have been more consistent with the size of the property being valued. An example of this is in the Phelan appeal. As noted by the Town, the comparables' gross living areas were 71%, 56%, 54% and 85% of the living area in the appealed Phelan property. Nonetheless, Collins made no size adjustment.

e) Both parties mentioned that one of the most knowledgeable individuals of the Waterville Estates properties was the owner of Waterville Estates Realty. Collins, to bolster her arguments, could have had this individual testify as an expert witness, but she chose not to. The Town at least testified to having had many conversations with Mr. Mullen and in fact rode around with Mr. Mullen reviewing the Properties to obtain his opinion of market value and his knowledge of the Properties.

In short, for Collins to adequately represent the Taxpayers, she needed to have performed more thorough research, become more knowledgeable of the appealed Properties and the comparable sales and performed a more in-depth analyses or have had expert witnesses available to support her arguments. Not having done this, the board was not convinced that the Properties were

overassessed to the extent she argued.

If the taxes have been paid, the amount paid on the value in excess of the ordered assessments above 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 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 "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
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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 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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins of Property Tax Reduction Consultants, Agent for the Taxpayers; and Chairman, Selectmen of Campton.

Date: April 18, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayers'" rehearing motion.¹ Except for Livshin case, docket no.: 16302-95PT, the board finds the Taxpayers did not present any "good reason" to grant a rehearing. See RSA 541:3, 6.

Concerning Livshin, the board failed to order that the assessment be reduced to the "Town's" recommended 1996 assessment. The ordered assessment for Livshin is \$115,150. See Municipality exhibit 6. If the taxes have been

¹ Note: The Taxpayers' rehearing motion failed to cite four docket numbers (16304-95PT, 16306-95PT, 16308-95PT and 16311-95PT) from these consolidated cases. The board assumes this was an oversight and will treat the rehearing motion as though it applied to all of the consolidated appeals.

paid, the amount paid on Livshins' value in excess of \$115,150 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

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any overpayment for 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.

Other than the correction in the Livshin case, the board denies the rehearing motion. The board's decision presents the board's complete analysis in these appeals, the rehearing motion does not convince us to alter those decisions.

The board appreciates the Taxpayers' agent's rehearing submission and her explanation of the steps she took to prepare for the initial hearing. Nonetheless, we stand by the conclusions stated in the decision.

To the extent the rehearing motion included new information and a new format concerning value or assessment evidence, the board cannot rely on that information in the rehearing process. TAX 201.37 (c) requires parties to submit all information at the original hearing, and new information is generally not allowed with the rehearing motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Kathleen Collins of Property Tax Reduction Consultants, Agent for the Taxpayers; and Chairman, Selectmen of Campton.

Date: June 6, 1997

Valerie B. Lanigan, Clerk

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