

John Whittier

v.

Town of Rumney

Docket No.: 16771-96PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$32,800 (land \$15,500; buildings \$17,300) on a .12-acre lot with a cottage (the Property). For the reasons stated below, the appeal for abatement is granted to the Town's recommended adjusted assessment.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 argued the assessment was excessive because:

- (1) the assessment was based on a flawed methodology;
- (2) the Town's comparables were not comparable to the Property;
- (3) the Town used newer and larger lots in assessing the smaller older

properties (such as the Property); and

(4) the Property is located near a large trailer park.

The Taxpayer submitted 12 exhibits, including Taxpayer Exhibit 12, which itemized the Taxpayer's arguments. Therefore, the board will not reiterate all of the Taxpayer's arguments in this section of the decision.

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The Town argued the assessment was proper because:

- (1) the assessment was based on a prior board of tax and land appeals' decision;
- (2) the Town reinspected the house and concluded that further depreciation was warranted for the age and condition of the building, which brought the building value in line with the New England appraisal;
- (3) the Property is subject to serious restrictions and has other amenities, and thus, only comparables within the conference property should be used;
- (4) the Taxpayer's appraisals used sales outside the conference property; and
- (5) the sales within the conference property supported the recommended assessment.

The Town recommended an adjustment to the land assessment due to the above-ground water line. The recommended assessment was \$28,300 (land \$14,700; building \$13,600).

#### **Board's Rulings**

Based on the evidence, the board finds the Town's recommended \$28,300 assessment (land \$14,700; building \$13,600) to be the best evidence of the Property's assessment.

While the Taxpayer was adamant that arriving at a proper assessment

could easily be done and that he had the definitive number, the board finds valuing this Property more challenging than the Taxpayer believes. The main reason for the board's perspective is the setting in which the Property exists. The Property is a small camp within a religious conference setting. At least according to the documents submitted, the Property can only be owned by people who are willing to sign a religious statement of beliefs. Additionally, owners must abide by various covenants concerning the use of the Property. Furthermore, owners are not free to sell the Property to anyone they want, but rather, the Property must be sold to someone who is willing to also sign the statement of faith, comply with the conference rules and who can be approved by the conference. Therefore, the potential market for this

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Property, assuming these restrictions are enforceable, is substantially limited. However, the board did not receive enough evidence to determine whether the restrictions enhanced the value of the Property or adversely affected the Property's value. We do, however, note that both of the Taxpayer's appraisers discussed the substantial impact of the covenants. The Armstrong appraisal, moreover, stated (page seven under the location adjustment) that deed restrictions adversely affected the Property's value. Because the test for all assessments is market value, see RSA 75:1, the issue of the effect of the conference restrictions must be acknowledged in trying to make a decision. Therefore, to the extent the Taxpayer asserted assessing this Property was a "no brainer," the board must disagree.

Turning to the assessment under appeal, the board finds the Town made a substantial effort to arrive at a fair and proper assessment on this Property.

We note that the Town inspected the Property after the abatement request was

filed, and the Town made adjustments to the building's assessment and later recommended an adjustment to the land assessment based on recent sales in the conference.

The Town asserted that the most comparable sales would be sales within the conference property, and the Town stated that those were the sales that were used for setting the Property's assessment. Based on the evidence, the board finds the Town was reasonable in its approach, and the board finds the Taxpayer did not introduce sufficient evidence to overcome this. Again, we note that the burden is on the Taxpayer to show the assessment was erroneous, and the Taxpayer did not do this.

To the extent the Taxpayer raises specific complaints about the Property and the failure of the assessment to reflect these concerns, the board finds the Taxpayer did not show that adjustments were required, especially given the variety of property locations and property types within the conference property.

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Concerning the Taxpayer's appraisals, we note that the April 1994, Armstrong appraisal estimated as \$26,000 value, and the April 1, 1996, New England appraisal estimated a \$22,000 value. The revised equalized assessment was \$25,050 ( $\$28,300$  revised assessment  $\div$  1.13 equalization ratio). Given the issues that exist in valuing the Property, the board does not find that the appraisals show overassessment but show that the assessment is within a reasonable range of the Taxpayer's two market-value estimates.

The board also notes that the Taxpayer filed an earlier appeal with the board (Docket No. 15086-94PT), therefore, the assessment under appeal was

based on a board-ordered assessment. The board gives its prior decision some weight in supporting the board's denial of this appeal.

Finally, the Taxpayer requested that the board award costs. The board denies the Taxpayer's request for costs. While the Taxpayer may believe assessing this Property is simple, the board finds that there are complexities in arriving at a fair assessment. The board finds that the Town made reasonable efforts to arrive at a fair assessment. Therefore, the board does not find that the Town acted in bad faith, and thus, no award of costs is warranted.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$28,300 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 1997 and 1998. 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

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Paul B. Franklin, 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 John Whittier, Taxpayer; Philip Bodwell of the Department of Revenue Administration, Agent for the Town; and Chairman, Selectmen of Rumney.

Date: December 17, 1998

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" motion to dismiss. The board rules as follows:

"Motion denied."

The "Taxpayer" is entitled to file a tax appeal for a subsequent year(s). However, if the board determines the arguments are not more compelling and the appeal was frivolously filed, the Town may file a motion for costs.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Valerie B. Lanigan, Clerk

Certification

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to John Whittier, Taxpayer; and Chairman, Board of Selectmen of Rumney.

Date:

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Valerie B. Lanigan, Clerk

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