

Fred and Elaine Majewski

v.

Town of Canaan

Docket No.: 18735-00PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$333,000 (land \$44,300; buildings \$288,700) on a 1.95-acre lot with a structure commonly known as The Canaan Street Lake Inn (the “Property”). The Taxpayers also own, but did not appeal a 3.6-acre lot with a single-family home and a 3.7-acre vacant lot. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying disproportionate shares of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayers must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Property is very unique and was formerly operated as an inn with the first section of the structure built in the late 1700's and the second portion built in the 1840's;
- (2) the Property is in an extreme state of disrepair and more than 50% of the structure has been gutted;
- (3) the heating system and a significant amount of the plumbing and electrical services have been removed;
- (4) a complete renovation would cost approximately \$1,600,000 resulting in a property worth only \$1,200,000;
- (5) conventional financing is not available in the Property's present condition; and
- (6) given all its deficiencies, the Property is little more than a very large, seasonal cottage with a value of approximately \$150,000.

The Town argued the assessment was proper because:

- (1) the previously assessed values were negotiated with the upcoming 2000 town-wide revaluation in mind rather than market value;
- (2) there were several sales in the neighborhood giving an indication of the Property's market value; and
- (3) although the Property is unique and difficult to value, it would be inequitable and unfair to assess it for less than \$300,000 after considering the other properties in the neighborhood.

The Taxpayers own three properties in the Town. They are identified as Map 1E, Lot 13, Sublot 1; Map 17, Lot 59A; and Map 17, Lot 59C. As the board explained to the parties at the hearing, whenever a taxpayer owns more than one property in a municipality but chooses to appeal the assessment on some but not all of the properties, the board must still consider the

assessments on the taxpayer's nonappealed properties in the same municipality. Appeal of the Town of Sunapee, 126 N.H. 214, 217 (1985). A taxpayer is not entitled to an abatement on any given parcel unless the aggregate valuation placed on all of the properties is disproportionate. See also Bemis Brothers Bag Co. v. Claremont, 98 N.H. 446, 451 (1954) ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant."). Therefore, when a taxpayer owns more than one parcel, an appeal for abatement on any one property will always require consideration of the assessments of any other properties. At the hearing, the Town and the Taxpayers stipulated the assessments for Map 17, Lot 59A and Map 17, Lot 59C were not in contention and the board is only considering the abatement appeal for Map 1E, Lot 13, Sublot 1 in this decision.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$174,500.

While the Taxpayers gave several reasons why the Property was overassessed, the general thread common to all the arguments was this is a unique, older property in a severe state of disrepair.

The Property was constructed in the 1790s with an addition in the 1840s with many of the original features remaining. However, the Property has not been maintained and a substantial amount of deferred maintenance has accrued.

The Taxpayers submitted a collection of photographs (Taxpayer Exhibit #1) showing the state of disrepair throughout the Property. The Property contains approximately 33,000 square feet of living area. The board concurs with the Town and the Taxpayers that this is a unique

property, both in its size and age. Previously used as an inn, it is substantially larger than other properties in the neighborhood. The Taxpayers purchased the Property in the middle 1990s for \$125,000 and during the next few years negotiated revised assessments and assessment increases with the Town. When the Town was revalued in 2000, the Property's assessment more than doubled. The Taxpayers argue the assessed value of the Property should not have risen to that amount given the fact no significant improvements have been made. In fact, most of the interior has been gutted including plumbing, electrical and heating fixtures except for a small area where the Taxpayers' son is currently living. The Taxpayers testified many new problems were discovered during the removal of the old materials from the building that were unknown at the time of purchase. Further, because the Property is located in the Town's historic district, there are many restrictions on the type and the method for making any renovations. To date, only the front of the Property has been repaired and some of the outside facing the neighbors so the appearance is not unpleasant.

The Taxpayers stated conventional financing for renovation of a project such as this is nonexistent due to the many deficiencies inherent in the structure as well as the return on the expenditures necessary to make the renovations. The Taxpayers would need to invest a substantial amount of money before any lending institution would consider conventional financing.

The board has determined the most appropriate way to calculate the correct assessment is through some revisions to the assessment-record card. To accomplish this, the board reviewed assessment-record cards for properties in the neighborhood. The board has determined the A8 quality factor the Town applied to the Property is excessive and has reduced that quality factor to

A4 correspondingly changing the adjustment factor from 1.7 to 1.33. Keeping the size adjustment factor the same (0.7789), the building square-foot cost, using the same base rate of \$54.00 now becomes \$50.35. The board has applied the \$50.35 square-foot cost to the effective area of the building of 19,003 square feet yielding a building market cost new of \$956,801. Next, the board reviewed the depreciation schedule and adjustments originally applied by the Town. The board finds additional revisions are appropriate here. The board has changed the normal depreciation rating from good to fair and added 15% to the previous 22%. (The board used the Town's comparable #4 in its August 26, 2002 letter to the Taxpayers as an indicator of the appropriate depreciation for a structure of this age in "fair" condition.) The functional depreciation adjustment of 5% for bat waste was kept as it was previously. Further, the board has changed the incomplete renovation factor from 50% to 45%. These figures represent a total depreciation percent of 87% or 13% good. Multiplying the 13% good times the building market cost new of \$956,801 yields a depreciated building value of \$124,400 (rounded). To this value must be added the value of the land and the extra features of \$44,300 and \$5,800 respectively. Adding these three numbers together yields a total assessed value for the Property of \$174,500 (rounded).

The Town completed a market analysis (Town Exhibit C) using four comparable sales. On the sales grid, it was necessary for the Town to make several adjustments to the selling prices of each of the comparable sales. Most of the adjustments were nominal in magnitude, however, each comparable sale had two adjustments made to its selling price that exceeded the selling price itself. The board can give this analysis no weight although it understands what the Town

was attempting to show. The magnitude of the adjustments highlights the fact that due to the uniqueness of its size, age and condition, none of the sales were remotely comparable to the Property.

If the taxes have been paid, the amount paid on the value in excess of \$174,500 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 2001. 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 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

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Jeff Majewski, representative for the Taxpayers; and Chairman, Selectmen of Canaan.

Date: October 11, 2002

Anne M. Bourque, Deputy Clerk