

Gilbert M. Costa and Natalie M. Costa
v.
Town of Epping

Docket Nos. 5180-88 and 7027-89

DECISION

These two appeals, having been consolidated for hearing, were heard, as scheduled, on May 22, 1990. The Taxpayers represented themselves. The Town was represented by David W. Bolton, appraiser for M.M.C., Inc.

The Taxpayers appeal, pursuant to RSA 76:16-a, the total assessment of \$715,300 (land, \$536,100; buildings, \$179,200) placed on their real estate, located on High Road, for the 1988 and 1989 tax years. The property consists of a dwelling and twenty-one separately assessed lots listed with assessed values as follows:

<u>Map</u>	<u>Block</u>	<u>Lot</u>	<u>Assessed Value</u>
3	42	1	\$ 41,200
3	42	2	41,100
3	42	3	224,100
3	42	4	40,500
3	42	5	41,600
3	42	6	15,000
3	42	7	22,100
3	42	8	19,300
3	42	9	19,000
3	42	10	19,800
3	42	11	23,300
3	42	12	20,400
3	42	13	24,100
3	42	14	19,700
3	42	15	21,700
3	42	16	23,000
3	42	17	20,600

3

42

18

20,200

3	42	19	19,600
3	42	20	19,200
3	42	21	<u>19,800</u>
Total			\$715,300

Neither party challenged the Department of Revenue Administration's equalization ratio of 98 percent for the 1988 tax year and 103 percent for the 1989 tax year.

The Taxpayers argued they were overassessed since the land had been appraised as separate lots. They stated that while the parcel had received a conditional subdivision approval in October, 1987, there had been no physical change to the land and no lots had been sold or built on. In essence, they argued the property should be assessed as a homestead with some value added for subdivision engineering. Based on that premise, they argued the entire property was worth approximately \$350,000, of which the house and its lot contributed approximately \$225,000. Upon questioning, they testified that to improve the land so as to make all the lots accessible and marketable would cost approximately \$200,000 for roads, \$20,000 for power, and \$15,000 for engineering, above and beyond the approximately \$19,000 spent to date for survey, engineering, and legal costs.

Mr. Bolton testified that the conditional subdivision approval did add value to the property and that is why the lots were assessed separately. He argued that all of the lots fronting on the unbuilt "paper" subdivision road were adjusted by a 50 percent influence factor to reflect their inaccessible location. He stated that undeveloped lots of 1 to 2 acres had sold during the revaluation time in the \$30,000 to \$40,000 range.

The Board rules as follows:

The Taxpayer's appeal is based on The Constitution of New Hampshire,

Part 2, Article 5, which states in part:

And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same

and RSA 75:1 (supp) which states:

Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination.

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R.R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954).

It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The Board finds as follows:

On October 5, 1987, the Costas received an approval of a 21-lot subdivision with the conditions "that no building permits will be issued for any lots within the subdivision until the sum of \$18,250 has been paid to the Board of Selectmen of the Town of Epping for the upgrading of High Road" and a letter of credit is obtained for the internal roads. On April 25, 1989, the Costas paid the Town \$18,250 for the upgrading of High Road and the Town responded on June 5, 1989, by indicating it would authorize the issuance of building permits for those lots fronting on High Road. Both these actions occurred after the assessment dates for 1988 and 1989. Also, as of both assessment dates, the Town had not upgraded High Road, largely due, as the testimony of the Costas indicated, to an action by an abutting landowner against the Costas and the Town over improvements to High Road as it is a scenic road (RSA 231:157). Lastly, no physical change had taken place to the subdivided land as of either tax year.

In short, the issue before the Board is a classic case of trying to ascertain the present worth of future benefits. Or more specifically in this case, what would a buyer have paid for the Costa's entire property fully knowledgeable that there were remaining uncertainties, risks, and substantial capital needed before the lots could be fully marketed.

The Board rules it is proper to assess the lots separately. Further, the subdivision approval, albeit with its conditions, contributes more value to the property than just the costs of achieving it as it has removed at least some uncertainty.

Therefore the Board rules that the Town's "influence factor" should be reduced by an additional 25 percent to correctly reflect the remaining risk and time before the retail value of the lots can be realized.

Based on that correction, the Board rules that the correct assessed values for 1988 and 1989 are as follows:

<u>Map</u>	<u>Block</u>	<u>Lot</u>	<u>Assessed Value</u>
3	42	1	\$ 38,800
3	42	2	28,600
3	42	3	210,200
3	42	4	28,100
3	42	5	29,200
3	42	6	9,600
3	42	7	12,500
3	42	8	9,700
3	42	9	9,500
3	42	10	10,200
3	42	11	13,700
3	42	12	10,800
3	42	13	14,500
3	42	14	10,100
3	42	15	12,100
3	42	16	13,400
3	42	17	11,000
3	42	18	10,600
3	42	19	10,000
3	42	20	9,600
3	42	21	<u>10,200</u>
Total			\$502,400

If the taxes have been paid, the amount paid on the value in excess of \$502,400 each year is to be refunded with interest at six percent per annum from date of payment to date of refund.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III

Peter J. Donahue

Paul B. Franklin

I certify that copies of the within Decision have been mailed this date, postage prepaid, to Gilbert M. and Natalie M. Costa, the Taxpayers, to the Chairman, Board of Selectmen, Town of Epping, and to Richard Young, Director, Property Appraisal Division.

Michele E. LeBrun, Clerk