

**Doane/Ruggles Fuel, Inc.**

**v.**

**Town of Lisbon**

**Docket No. 5929-89**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$24,400 on a .34-acre lot (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 unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved it was disproportionally taxed.

The Taxpayer argued the assessment was excessive because:

- 1) there was no direct access to Atwood Street, a paved street;
- 2) access was over a dirt road;
- 3) the land was purchased in 1986 for \$6,400; and
- 4) a recent appraisal indicated an August 1991 value of \$11,000.

The Town argued the assessment was proper because:

- 1) adjustments were made for topography, excess frontage and the lack of utilities; and
- 2) the value was supported by comparable sales.

The board's inspector inspected the property, reviewed the property-record card, and filed a report with the board. This report concluded the proper assessment should be \$15,250. The inspector made adjustments to the Town's assessment for:

- (i) swamp and steep grades; and
- (ii) water run-off on the full length of the lot.

Based on the evidence, we find the correct assessment should be \$12,650. This assessment is ordered because this lot is more than likely unbuildable because of the topography and the zoning requirements. The zoning requires a 25-foot set-back on both the front and rear, leaving 10-15 feet for a building. While the lot may be buildable, a variance would have to be obtained to build. Additionally, the Town's comparables were all developed parcels with direct road frontage on a paved street. We must determine whether the assessment has resulted in the taxpayer paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975).

The board considers this lot of marginal value and worth less than the assessment and less than the inspector's figure. The lot may even be worth less than the \$12,650, but given the evidence and the Taxpayer's appraisal with time adjustments of 15 percent, the assessment was excessive.

If the taxes have been paid, the amount paid on the value in excess of \$12,650 shall be refunded with interest at six percent per annum from date paid to refund date.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

September 5, 1991

George Twigg III, Chairman

Ignatius MacLellan, Esq.

I certify that copies of the within decision have been mailed this date, postage prepaid, to Doane/Ruggles Fuel, Inc., the Taxpayer, to the Chairman, Board of Selectmen, Town of Lisbon, and to David W. Bolton, Assistant Director, Property Appraisal Division.

September 5, 1991

Brenda L. Tibbetts, Clerk