

Thomas W. Cook

v.

Town of Dunbarton

Docket No.: 10171-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$103,500 on a vacant 46.12-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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the lot was purchased in April, 1985 for \$25,000; the seller stated the Town would not allow him to subdivide the Property into four lots;
- (2) an application for special exception was denied by the Town because the engineering plan was not stamped and did not show the complete area of the Property;
- (3) the Property is prejudiced because the Town will not allow subdivision;
- (4) a May, 1991 market analysis suggested an asking price of \$60,000;

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(5) the Property was on the market for over 1 year in 1991 with the asking price reduced to \$58,000 with no offers; and

(6) the fair market value is no more than \$50,000.

The Town argued the assessment was proper because:

(1) the Property is considered to be one lot and adjustments have been made for topography, excess frontage and undeveloped factors;

(2) typical house lots were selling for approximately \$50,000 in 1990;

(3) the Property has been assessed in the same manner as other properties in Town;

and

(4) the assessment is fair and equitable.

The board's inspector inspected the property, reviewed the property tax card, and filed a report with the board. This report concluded the proper assessment should be \$80,300 (copy enclosed).

Board's Rulings

Based on the evidence, we find the correct assessment should be \$80,300. This assessment is ordered because the board finds the best evidence to be that of its review inspector who performed an on-site inspection of the Property. The adjustments made by the inspector are supported by the plans and the evidence submitted of the Property's topography, grade, slope and wetlands.

The Town failed to submit any sales to support the assessment. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's

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assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

If the taxes have been paid, the amount paid on the value in excess of \$80,300 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. 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 twenty (20) 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas W. Cook, Taxpayer; and Chairman, Selectmen of Dunbarton.

Dated: June 3, 1994

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ORDER

This order responds to the Town's motion for reconsideration. The motion is denied for the following reasons:

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1) In arriving at its decision, the board did not rely on the assertions that the Town would not allow the Taxpayer to subdivide the Property into 4 lots, but focused on the Property's innate physical problems (topography, grade, physical slope, wetlands). The board understood that the Taxpayer had not proceeded far enough in the process in order to get a true answer from the Town.

2) The board based its decision on the best evidence available, that being the plans and cross sections submitted at the hearing which depicted the Property's physical problems and the report of the board's review inspector, who performed an on-site inspection in 1992.

3) The Town provided no sales evidence to support its assertion that the assessment was in line with market sales.

4) The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that copies of the within Order have this date been mailed, postage prepaid, to Thomas W. Cook; and the Chairman, Selectmen of Dunbarton.

Date: August 5, 1994

Valerie B. Lanigan, Clerk

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