

Charles H. and Frances H. Townes

v.

Town of New Boston

Docket No.: 10389-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$50,050 (land in current use \$10,150; land not in current use \$39,900) on Map 13 Lot 66, a vacant, 143-acre lot with 136.5 acres in current use and a 6.5-acre gravel pit (the Property). The Taxpayers also own but did not appeal Map 3 Lot 31 with a total assessment of \$46,050. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the lot not in current use is used as a gravel pit and is located on a narrow dirt road which is not maintained in the winter;
- (2) the Town is assessing the lot as a floating house lot and its comparables are in a more developed part of town and are all subdivided;

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- (3) the lot is very steep and when compared to similar properties is overassessed;
- (4) the lot is part of a larger tract and could not be separately sold as a home site without considerable expense; and
- (5) the fair market value of the lot as of April, 1990 is between \$14,000 and \$15,000.

The Town argued the assessment was proper because:

- (1) the lot has been assessed in the same manner as all other properties in Town;
- (2) the lot not in current use is being used as a gravel pit and being assessed as a primary site of 2.0 acres with 4.5 acres of backland; and
- (3) comparable sales support the assessment.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$42,050.

The board finds the highest and best use of the Property to be a gravel pit.

Further, while the board finds the Town's assessment of a primary site value with remainder land for the 6.5 acre portion of land not in current use is not the most desirable method of assessing the land, the evidence submitted was that the same method was applied throughout the Town. The Town admitted, upon questioning by the board, that the Property was not serviced by telephone or electricity and no adjustments were made to reflect the costs to bring utilities to the site. The board has reviewed the evidence and the comparable sales submitted and finds that an adjustment for the lack of telephone and

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electrical service warrants an additional 25% adjustment to the land. The board finds the proper assessment to be:

2-acre site value - \$40,000 x 80% (topo.) x 75% (utility)	= \$24,000
4.5-acre excess land x \$5,000 x 35%	= \$ 7,900
136.5 acres in current use	= <u>\$10,150</u>
<u>Total</u>	= \$42,050

If the taxes have been paid, the amount paid on the value in excess of \$42,050 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles H. and Frances H. Townes, Taxpayers; and Chairman, Selectmen of New Boston.

Dated: December 1, 1993

Valerie B. Lanigan, Clerk