

Heribert and Solveig Tryba

v.

Town of Harrisville

Docket No.: 8470-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of: \$47,500 on Lot 48-4, a vacant, 1.17-acre lot; and \$52,600 on Lot 48-5, a vacant, 1.83-acre lot (the Properties). The Taxpayers also own, but did not appeal, Lot 48-2 and Lot 10-2. For the reasons stated below, the appeal for abatements is granted to the Town's recommended assessment with an additional 10% taken off for an undeveloped factor.

The Taxpayers have the burden of showing the assessments were 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).

The Taxpayers argued the assessments were excessive because:
(1) the assessments did not adequately consider varying water quality, cove location, pond bottom or northerly orientation;

- (2) the Town assessed Chesham Pond at \$40,000/acre but Child's Bog, a superior waterbody, was only assessed at \$13,750 per acre, which would be more consistent with the Properties' value (Harrisville Pond, the best waterbody was assessed at \$50,000-\$70,000 per acre.); and
- (3) the correct assessments should have been 50% to 70% of the actual assessment.

The Taxpayers submitted reports on water quality along with a summary of the three ponds.

The Town argued the assessments were proper because:

- (1) the 2.25 condition value was applied consistently around Chesham Pond with the exception of some very different properties that have higher or lower condition factor;
- (2) Child's Bog does not have the same recreational value as Chesham Pond, especially due to stumps in Child's Bog; and
- (3) the Taxpayers' per-acre analysis cannot be relied upon due to some lots being on Class VI roads with varying lot sizes.

The Town, after hearing the Taxpayers' case, stated a 2.00 condition would be appropriate, resulting in assessments of \$42,200 (Lot 48-4) and \$46,800 (Lot 48-5).

Board's Rulings

Based on the evidence, we find the correct assessments should be \$39,940 on Lot 48-4 and \$44,420 on Lot 48-5. These assessments are ordered because we agree with the Town that a further adjustment should have been made given the condition of these waterfront lots. However, the board concluded a -10%

adjustment should have been made because these lots are not developed. The board's calculations are as follows.

Lot 4

$$1.17 \text{ AC} \times \$14,973.09 \times 1.20 \times 1.90 = \$39,940$$

Lot 5

$$1.830 \text{ AC} \times \$10,645.62 \times 1.20 \times 1.90 = \$44,420$$

The resulting assessments, based on the board's experience, appear reasonable.

If the taxes have been paid, the amount paid on the value in excess of \$39,940 on Lot 4 and \$44,420 on Lot 5 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, the Town shall also refund any overpayment for 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Heribert and Solveig Tryba, Taxpayers; and Chairman, Selectmen of Harrisville.

Dated: July 6, 1994

0008

Valerie B. Lanigan, Clerk

Heribert and Solveig Tryba

v.

Town of Harrisville

Docket No. 08470-90PT

ORDER

This order responds to a motion by the "Town" for reconsideration/rehearing in the above captioned matter of a July 6, 1994 decision issued by the board.

The board hereby denies the motion.

The Town's motion did not include sufficient information to convince the board that an undeveloped factor, in some form, was not an appropriate consideration which impacts market value. The fact that the Town's methodology does not include an undeveloped factor per se, does not mean that the assessment is not affected by that appraisal term and should be reflective of it.

It should be further noted that development costs are unique to the land, not to the buildings.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Heribert and Solveig Tryba, Taxpayers; and the Chairman, Selectmen of Harrisville.

Date: August 10, 1994

Valerie B. Lanigan, Clerk

0009