

Simard Family Trust

v.

Town of Auburn

Docket No.: 8543-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$54,200 on a 6-acre, vacant lot on Wilson's Crossing Road (the Property). The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 met that burden of proof and showed disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the Property is steep and swampy;
- 2) the Property has only one buildable site;
- 3) the Property is actually a portion of a larger 250-acre parcel located in Derry and Londonderry, yet the Town assessed it as an individual lot;

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- 4) the Property should be assessed with the larger parcel since the Town has never approved a subdivision, nor given approval to build on the Property as an individual lot;
- 5) an April 1, 1990 appraisal estimated a \$42,000 value; and
- 6) similar lots have sold for an average \$48,636 price.

The Town argued the assessment was proper because:

- 1) a 30% adjustment was given for the Property being unimproved, 43% was given for excess frontage, and 15% was given for shape, size, and topography;
- 2) the Property is assessed equitably with other Town properties; and
- 3) the assessment value is the median value when compared to similar properties.

Board's Rulings

Based on the evidence and an appraisal report by Capital Appraisal Associates which uses a direct sales approach, we find the highest and best use is residential development (one potential buildable site - see RSA 674:53), recognizing its topographical limitations of steepness and wetlands.

Using three Auburn and one Candia comparable sales the estimated market value of the subject lot is \$42,000 in the appraisers opinion.

The subject six acre parcel is actually a small portion of a much larger parcel of land 250 acres in size located in the adjoining towns of Londonderry and Derry. No subdivision has been made for the subject six acre

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site and is therefore unmarketable in its present condition. No building

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adjustments under RSA 75:8.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Simard Family Trust, Taxpayer; and Chairman, Selectmen of Auburn.

Dated: November 19, 1993

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Valerie B. Lanigan, Clerk