

**Frederic T. Greenhalge**

**v.**

**Town of Dunbarton**

**Docket No.: 10964-91PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$166,850 (land \$51,050; buildings \$115,800) on a 34.91-acre lot with a house (the Property). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) in 1990 a conservation easement was given to the Society for Protection of New Hampshire Forests which limits use of the land and the buildings; and
- (2) the Town did not consider this easement in assessing the Property.

The Town argued the assessment was proper because at the time of the reassessment in 1990, the Town was aware of the conservation easement and,

after consultation with department of revenue administration, assessed the land under the conservation easement at current use rates.

### Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The conservation easement granted by the Taxpayer to the Society for the Protection of New Hampshire Forests is a factor that affects market and should be considered by the Town. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (In arriving at an assessment, the Town must look at all relevant factors). The Town did exactly that. Without any consideration for the easement, the Property would have been assessed at \$298,022. The Town applied current use rates (RSA 79-A:5) to the land affected by the easement resulting in the assessment under appeal of \$166,850.

The Board finds the Town's approach to be reasonable for two reasons:

- 1) the Town's methodology resulted in a reduction of the assessment by \$131,172 (\$298,022 - \$166,850) which is supported by the Taxpayer's 1990 appraisal of the conservation easement at \$135,000; and
- 2) valuing the conservation easement land at current use rates reflects the inherent value of the land with such restrictions; further, the legislature determined that applying current use rates to conservation easement land made so much sense, it enacted RSA 79-B in 1990 to provide for such an assessment.

While the Taxpayer has not applied for either current use assessment (RSA 79-A:5) or conservation restriction assessment (RSA 79-B:4), the Town's methodology reasonably considered the effect of the easement and resulted in an assessment that is proportional based on the evidence submitted.

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A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

**Certification**

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

Dated: February 22, 1995

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Valerie B. Lanigan, Clerk

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