

Sally Long-Renaudette

v.

Town of Gorham

Docket No.: 11210-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$8,000 on a vacant, 10,000 square-foot 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 her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the lot is not level as stated on the assessment record card and would require fill to develop;
- (2) lots double in size are assessed for only \$1,200 more despite their greater utility;
- (3) a similar sized lot behind the Property is assessed for only \$4,800;
- (4) the proper assessment should be approximately \$5,000 due to the relative assessments in the area; and

(5) the lot was listed for sale in 1993 for \$7,000 with only one offer by an abutter for \$5,000.

The Town argued the assessment was proper because:

- (1) lot 44 adjacent to the Property sold in February 1993 for \$9,047;
- (2) an assessment comparison of other 10,000 square foot lots in the neighborhood indicates the Property is proportionately assessed;
- (3) lots off Spring St. were given a lower site index factor because it was a side road;
and
- (4) lots of half the size do not sell for half the amount because they have an inherent right to construct a camp or dwelling.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$7,000.

This assessment is ordered because:

- 1) the topography, washed-out area and the general cut-over appearance of the lot warrants an additional - 10 % reduction in the condition factor; and
- 2) this revised assessment is more proportional to the sales price of the larger adjoining lot and the listing price of \$7,000 and the declined offer of \$5,000.

No further abatement is warranted because the Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

If the taxes have been paid, the amount paid on the value in excess of \$7,000 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Sally Long-Renaudette, Taxpayer; and Chairman, Selectmen of Gorham.

Dated: August 5, 1994

Valerie B. Lanigan, Clerk

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