

David S. Dana
Dalton Ridge Corporation

v.

Town of Dalton

Docket No.: 11270-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments on the "Properties," as follows.

| Map/Lot # | Assessment | Land Value | Bldg. Value | Description |
|-----------|------------|------------|-------------|--|
| 409/34 | \$ 391,650 | \$ 217,300 | \$ 174,350 | an 8.63-acre lot with a guest house ("Bridge House") |
| 410/35 | \$ 131,100 | \$ 131,100 | \$ -0- | a vacant, 9.21-acre lot ("Lot 20") |
| 409/48-50 | \$ 288,200 | \$ 217,750 | \$ 70,450 | an 8.95-acre lot with a single-family home ("Guest House") |
| 409/51 | \$ 92,700 | \$ 92,700 | \$ -0- | a vacant, 2.809-acre lot ("Lot 5") |
| 409/52 | \$ 275,900 | \$ 217,600 | \$ 58,300 | an 8.89-acre lot with a single-family home ("Round House") |
| 409/54 | \$ 430,400 | \$ 218,550 | \$ 211,850 | a 9.57-acre lot with a single-family home ("Dana Residence") |

The Taxpayers' appeal document included several other properties owned by the

Taxpayers. However, those properties were in current use. The board does not

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review current-use assessments in RSA 76:16-a appeals, and the board does not review ad valorem assessments on properties in current use.

For the reasons stated below, the appeals for abatement are granted.

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). We find the Taxpayers carried this burden and proved disproportionality.

Taxpayer's Arguments

The Taxpayers argued the assessments were excessive because:

- (1) the Town's assessments were excessive given the lack of real estate activity in Dalton Ridge and the out-parcels;
- (2) the Dalton Ridge development was not competitive with developments in well known areas such as Sugar Hill, Bretton Woods, Franconia or Conway and Dalton Ridge's steep grades and network of gravel roadways were deterrents to potential buyers;
- (3) the amenities added only marginally to the marketability of the development and the restrictive covenants could be a negative factor to the market; and
- (4) a September 1994 appraisal estimated the fair market values as of April 1, 1991 as follows.

| | |
|----------------|-------------|
| Bridge House | - \$290,000 |
| Dana Residence | - \$255,000 |
| Guest House | - \$126,000 |

Round House - \$113,000

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Lot 20 - \$35,545

Lot 5 - \$35,545

Town's Arguments

The Town argued the assessments were proper because:

(1) there was no community or development in Dalton as extensive or desirable as Dalton Ridge;

(2) the restrictions imposed by the Dalton Homeowner's Association in effect serve as private zoning which enhances the value of the Properties;

(3) two arm's-length sales in the subdivision occurred during the revaluation which were used to set the values at Dalton Ridge; and

(4) the Town recommended that the Properties be reduced by 25% consistent with the board's prior order in Thayer v. Dalton, docket no. 7431-89.

The board's inspector inspected the propert[ies], reviewed the property-assessment card[s], reviewed the file and exhibits, and he filed a report with the board (A copy of the report was mailed to the parties for their comments.). This report concluded an abatement was warranted.

Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves.

Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, we find the correct assessments should be as follows.

409/34 Bridge House \$309,200

409/54 Dana Residence \$293,000

| | | |
|-----------|-------------|-----------|
| 409/48-50 | Guest House | \$137,900 |
| 409/52 | Round House | \$116,400 |
| 410/35 | Lot 20 | \$61,800 |
| 409/51 | Lot 5 | \$30,900 |

The board has not allocated the value between land and buildings and the Town shall make this allocation in accordance with its assessment practices.

The board spent a considerable amount of time reviewing all of the information and documentation submitted to the board, including the appraisals, the comparables, and Mr. Bartlett's report. It would be impossible, and it is unnecessary, for the board to repeat every aspect of its review. Suffice it to say, that after careful consideration of all the information, the board concluded that Mr. Bartlett's report was the best evidence of value presented to the board. Moreover, Mr. Bartlett's report was consistent with the Thompson appraisal information.

Findings and Rulings

The board finds and rules as follows on the parties' requests for findings of fact and rulings of law:

Taxpayers

Findings of Fact

- 1) Granted.
- 2) Neither granted nor denied.
- 3) Granted.
- 4) Neither granted nor denied.
- 5) Granted.
- 6) Neither granted nor denied.

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- 7) Denied.
- 8) Neither granted nor denied.
- 9) Neither granted nor denied.

Rulings of law

- 1) Granted.
- 2) Granted.
- 3) Granted.
- 4) Denied.
- 5) Denied.

Town

- 1) Granted.
- 2) Granted.
- 3) Neither granted nor denied.
- 4) Denied.

If the taxes have been paid, a refund shall be made, consistent with the board's order, 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, 1993 and 1994. 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 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
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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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven L. Winer, Esq., Counsel for David S. Dana and Dalton Ridge Corporation, Taxpayer; and Chairman, Selectmen of Dalton.

Dated: March 17, 1995

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the parties' joint clarification motion, which is granted.
The board's March 17, 1995 decision is amended consistent with the motion.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that the foregoing order has been mailed this date, postage prepaid, to Steven L. Winer, Esq., counsel for David S. Dana and Dalton Ridge Corporation, Taxpayer; and Chairman, Selectmen of Dalton.

Date: May 3, 1995

Valerie B. Lanigan, Clerk