

Maurice Hueber

v.

Town of Belmont

Docket No.: 11349-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the following 1991 assessments: \$28,700 (land only) known as Map 4, Lot 34-20; and \$35,400 (land only) known as Map 4, Lot 34-26 (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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- 1) the lots were grossly over assessed;
- 2) the road is not maintained by the Town;

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3) a purchase and sales agreement dated September 9, 1991, for \$35,000 did not result in a sale because the Town refused to issue building permits; and
4) the sale to Drouin in November, 1992, was not an arms-length sale as personal property was included (Lot 26 sold for \$17,000).

The Town argued the assessment was proper because:

1) the lots are buildable once the public improvements are completed and the statute prohibits the Town from issuing building permits until that time;
2) a deed of transfer from the Taxpayer to Drouin Builders for Lot 26 indicated a sales price of \$21,000; and
3) the hardship is self imposed because the owner purchased land in an incomplete subdivision.

The board's inspector reviewed the assessment-record card, reviewed the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. 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 Findings

Based on the evidence, the board finds the proper assessments to be as follows:

Lot 34-20 - \$21,525

Lot 34-26 - \$26,550

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The board rules a -25% adjustment to each lot is appropriate because of the inability of a buyer to secure a building permit until the access road is brought up to standard and accepted.

If the taxes have been paid, the amount paid on the value in excess of \$21,525 and \$26,550 for lots 34-20 and 34-26 respectively shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:16-c and board rules 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.

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been

mailed this date, postage prepaid, to Maurice Hueber, Taxpayer; and Chairman,
Selectmen of Belmont.

Dated: December 9, 1993

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Melanie J. Ekstrom, Deputy Clerk