

Harvey and Judy Edelkind

v.

Town of Dublin

Docket No.: 12345-91CU

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$269,517 (land \$125,417; buildings \$144,100) on Lot 24-B, a 27.80-acre lot (of which 25.80 acres were in current use) with a house (the Property). The Taxpayers also own but did not appeal the assessment of \$8,654 on Lot 24, a 96.90-acre lot in current use. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was 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.

The Taxpayers argued the assessment was excessive because:

- (1) the 2.0 acre lot not in current use is assessed disproportionately to comparable properties;
- (2) the Diffenderfer property is the most comparable in terms of view and has a condition factor of 1.25;

- (3) the Property should have a condition factor of 1.25; and
- (4) an assessment of \$186,267 is appropriate.

The Town suggested that the correct condition factor should be 3.50 for a revised assessed value of \$235,017 and argued the revised assessment is proper because:

- (1) the site value is based on house sites and views from the house sites;
- (2) the condition factor is consistently applied to all properties with views with a .50 adjustment to properties with 2 residences; and
- (3) the Diffenderfer property does not have a comparable view to the subject and is quite narrow.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$235,017 (land \$90,917; building \$144,100). This assessment is ordered because the board finds based on the assessment-record cards and photographic evidence submitted that a reduced condition factor of 3.50 is appropriate. Further, the board finds that the subject's view is far superior to the Diffenderfer view and a site factor of 1.25 was not substantiated by the evidence.

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 Page 3
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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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Harvey and Judy Edelkind, Taxpayers; and Chairman, Selectmen of Dublin.

Dated: November 17, 1994

Valerie B. Lanigan, Clerk

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