Mary F. and Richard A. Boss, Jr.
Douglas W. and Kathryn B. Worden
Robert G. and Cynthia Martin
Mary E. and Peter A. Bender
Barbara B. and Martin Tanner
John R. and Gerda Bender
Marshall G. and Rachel M. Rowe
Bruce R. and Betsy A. Stefany
Lillis Cancelliere
Mark F. and Patricia Howland

v.

Town of Hopkinton

Docket Nos.: 12407-91PT, 11599-91PT, 11600-91PT, 12432-91PT, 12326-91PT, 12389-91PT, 12440-91PT, 12443-91PT, 12453-91PT, and 12578-91PT

DECISION

The above listed "Taxpayers" are all owners of single-family residences located on Hopkins Green Road in the "Town" of Hopkinton. The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeals on written submittals. Several Taxpayers requested consolidation of their appeals (Properties) and the arguments submitted by the parties were in most cases quite similar. Consequently, the board on its own motion has consolidated these appeals. The Taxpayers' assessments being appealed, pursuant to RSA 76:16-a, are as follows:

Boss, Jr., Worden, Martin, Bender, Tanner, Bender, Rowe, Stefany, Cancelliere and Howland v. Town of Hopkinton

Docket No.: 12407-91, 11599-91, 11600-91, 12432-91, 12326-91, 12389-91, 12440-91, 12443-91, 12453-91 and 12578-91PT

TAXPAYER	DOCKET NO.	ASSESSMENT
Mary F. and Richard A. Boss, Jr.	12407-91	$310,400
Douglas W. and Kathryn B. Worden	11599-91	$307,950
Robert G. and Cynthia J. Martin	11600-91	$322,650
Peter A. and Mary E. Bender	12432-91	$293,300
Barbara B. and Martin Tanner	12326-91	$351,900
John R. and Gerda Bender	12389-91	$289,350
Marshall G. and Rachel M. Rowe	12440-91	$301,000
Bruce R. and Betsy A. Stefany	12443-91	$355,850
Lillis Cancelliere	12453-91	$324,150
Mark F. and Patricia Howland	12578-91	$314,900

The board has reviewed the written submittals from all the Taxpayers and the Town and issues the following decision.

INTRODUCTION

Hopkins Green Road is located off of Hopkinton Road in Hopkinton, New Hampshire. There are 17 lots in the development and all 17 lots share two common lots with a total of 19.74 acres. All of the lots have been developed with colonials or cape cod style homes ranging from 2,000 +/- square feet to 4,000 +/- square feet. The development was developed from 1987 to 1989 and all of the homes have good quality construction and good utility. All Properties have 2.5 bathrooms and 3 or 4 bedrooms

and have two car garages.

ARGUMENTS

The Taxpayers' arguments were well outlined in their submittals and need not be enumerated in detail. However, in summary, their arguments were as follows:

1) the land was assessed at $450 per front foot which was higher than comparable neighborhoods that were generally assessed at $200 to $400 per front foot;

2) two sales within Hopkins Green development and several 1991 to 1993 appraisals indicated lower market values than the Properties' assessments;

3) the restrictive covenants do not enhance the value due to the difficulty in enforcing the covenants and the expenses associated with the common land; and

4) there is a high level of highway noise from I-89.

The Town's arguments were outlined in its submittals and need not be enumerated in detail. In summary, the Town argued the assessments were proper because:

1) the $450 front foot price was based on an analysis of sales of properties within Hopkins Green;

2) the 1992 sales and Taxpayers' appraisals (including the cost approach) generally support the assessments after consideration is given for their proper sales price, the seller's motivation, and the 1992 equalization ratio of 106%; and

3) all of the market influences of close access, noise, and restrictive covenants are reflected in the values because the assessments were derived from sales of similarly affected properties.

The board's inspector inspected the Properties, reviewed the assessment-record cards and the parties' briefs and filed a report with the board. A copy of the summary of the report was sent to all parties and is a part of the record. **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 Taxpayers failed to prove the Properties were disproportionately assessed. In arriving at this conclusion, the board reviewed all of the evidence submitted by the parties, its appraiser's report, and took a view of Hopkins Green and comparable neighborhoods. The board reviewed the evidence in two general ways: (1) market data and (2) methodology.

Market Data

The board finds that its appraiser's report is the best evidence, although not conclusive, of the indicated range of values for the various appealed Properties because:

(1) it incorporated all of the market data presented by the parties in its analysis; and

(2) it adjusted the market data for time, common land, building size, lot size and configuration and building components.

While the report concluded that some of the assessments may have been slightly above or slightly below the median of the indicated range, such a conclusion does not

necessarily indicate that the assessments were disproportional because there are acceptable ranges for opinions of market value. The focus of our inquiry is proportionality, requiring a review of the assessments to determine whether the properties are assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

In this case we find, based on the Department of Revenue Administration's (DRA) equalization ratio (100%) and coefficient of dispersion (8.25%), and the board inspector's analysis, a reasonable measure of the range is approximately 8% from the median ratio of 100% or full and true market value. As the board's inspector's report notes, all of the assessments are within the indicated value range.

Methodology

In reviewing the Town's appraisal methodology, the board examined: (1) the assessment-record cards; (2) the front foot prices used in different neighborhoods; and (3) viewed the appealed Properties and several comparable neighborhoods.

The board's review of the assessment-record cards finds the Town used consistent adjustments for both the land quality and configuration and for the quality and living area utility of the dwellings. For example, the board reviewed the functional

depreciations given to the garage section of many of the houses and found they coincided with an alternate method of deducting for the unfinished garage area. The Town's adjustments to the Properties appeared reasonable and consistent during the board's view of the Properties.

The board finds that the Taxpayers did not prove that the $450 front foot price did not reasonably reflect the market of the Properties in 1991. Moreover, the board's inspector's report analyzed sales of property in Hopkins Green and outside Hopkins Green and determined through a paired analysis that there was a significant premium difference being paid for the common area within Hopkins Green. In addition to the added value due to the commons, the board also noted that the relatively narrow shape of most of the lots necessitated a higher front foot price than other similar developments that generally had larger frontage lots. If the Town had used lower front foot prices as they had in similar neighborhoods, the resulting assessments would have been below market value because of the narrower configurations of the lots and because the value of the common area would not have been recognized.

Based on the board's experience, it finds that the restrictive covenants, while perhaps administratively a nuisance at times, do generally protect and enhance the value of the Properties in Hopkins Green. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Guimm, ___ N.H. ___ (December 17, 1993) (administrative board may use expertise and experience to evaluate

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 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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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that the foregoing decision has been sent, postage prepaid, to Mary and Richard A. Boss, Jr., Douglas and Kathryn Worden, Robert and Cynthia Martin, Mary and Peter Bender, Barbara and Martin Tanner, John and Gerda Bender,

Boss, Jr., Worden, Martin, Bender, Tanner, Bender, Rowe, Stefany, Cancelliere and

Howland v. Town of Hopkinton

Docket No.: 12407-91, 11599-91, 11600-91, 12432-91, 12326-91, 12389-91, 12440-91,

12443-91, 12453-91 and 12578-91PT

Marshall and Rachel Rowe, Bruce and Betsy Stefany, Lillis Cancelliere and Mark and Patricia Howland, Taxpayer; and Chairman, Board of Selectmen Hopkinton.

Dated: April 15, 1994

0008

Valerie B. Lanigan, Clerk

Bruce R. and Betsy A. Stefany

v.

Town of Hopkinton

Docket No: 12443-91PT

REHEARING ORDER

On May 5, 1994, the board received a request for rehearing from the Taxpayers of the board's decision of April 15, 1994 (decision).

The Taxpayers' request was generally based on two issues:

1) the Taxpayers' lot was configured differently than the majority of the lots within the subdivision, and therefore the board's finding that the higher front-foot price due to the narrow shape of most lots does not apply to the Taxpayers' lot; and

2) the lot does not directly view or have direct physical access to the common as do most other lots in the subdivision.

The board denies the Taxpayers' motion for rehearing for the reasons that follow.

1) While the board agrees that the configuration of the Taxpayers' lot is clearly not the

norm for subdivision, the Town's several adjustments for its configuration result in the land assessment being within the general range of the other appealed land assessments within the same subdivision. The Town triangulated the frontage due to the irregular shape of the lot by multiplying the frontage times .65 to result in a figured frontage of 291 feet. Further, the Town adjusted the frontage calculation by 15% due to its excess figured frontage and 5% for undeveloped to account for the undeveloped portion of the figured frontage. The resulting land value of $120,550 is within the range of the other land values of the appealed Property ($109,350 - $128,600).

While the Taxpayers may not have a direct view on to the common, they do share and derive the same benefits of using the common and generally benefit from the privacy and amenity provided by the common. The board was unable to discern any market evidence submitted as to any difference the market has recognized due to the location of the Taxpayers' lot. In reviewing the Taxpayers' own appraisal, the board notes the appraiser relied on two sales within the development, one also on the access road and one opposite the common. The appraiser did not however, make any adjustment due to the locational difference of the two sales.

Again the board finds that the best evidence of market value was its appraiser's report in which he made specific adjustments in the adjustment grid for the Taxpayers' Property relative to the large frontage of the lot.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Boss, Jr., Worden, Martin, Bender, Tanner, Bender, Rowe, Stefany, Cancelliere and Howland v. Town of Hopkinton

Docket No.: 12407-91, 11599-91, 11600-91, 12432-91, 12326-91, 12389-91, 12440-91, 12443-91, 12453-91 and 12578-91PT

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certified that the foregoing order has been mailed, postage prepaid to Bruce and Betsy Stefany, Taxpayers; and Chairman, Board of Selectmen, Hopkinton.

Dated: June 3, 1994

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Valerie B. Lanigan, Clerk