

Theresa M. and Frank B. Hawkins

v.

Town of Springfield

Docket No.: 12499-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$31,800 (land only) on 1.3 acres (the Property). The Taxpayers 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 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 Property was purchased in May, 1989 for \$2,800 for the sole purpose of constructing a leachfield; however, the cost of construction was too high;
- 2) the assessment increased approximately \$23,700;
- 3) larger lots were assessed less; and

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4) the Property has limited access, is intruded by utility poles, and due to moisture content would make development costly.

The Town argued the assessment was proper because:

- 1) comparable properties indicate the Taxpayers have been assessed equally;
- 2) the Taxpayers' comparables are located in different areas of the Town and have lower basic homesite values; homesite values increased depending on the location in the Town (New London end of Springfield);
- 3) the Taxpayers' Property was assessed consistent and equally; and
- 5) the Taxpayers stated the road is gravel, private and unmaintained, however, it is paved and Town maintained.

Board Findings

Based on the evidence the board finds the proper assessment to be \$26,550. This assessment is ordered because:

- 1) in reviewing the comparably assessed properties submitted by the Town, the board finds the topography adjustment should be x 75 to recognize the above grade aspect of the lot and the physical limitation of access to one point;
- 2) while the board realizes that the above grade aspect does provide a potential for view of Baptist Pond, the lot does have several physical limitations as indicated by the Taxpayers that need to be recognized in topography adjustment;
- 3) if the lot's highest and best use is for site of leachfield and any accessory buildings for the Taxpayers' developed waterfront lot, the abated value of \$26,550 is more reasonable relative to its contributory value to the

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Taxpayers' estate as a whole; and

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4) if the lot's highest and best use is as a separate lot, the abated assessment results in the Property being more proportionately assessed relative to lot 484-215, which is approximately three times larger than the Property and which sold in 1989 for \$34,500.

No further abatement is warranted because:

- 1) the Taxpayers' comparable properties were not comparable due to their difference in location and lack of proximity to a waterbody; and
- 2) the Property does have value as either an accessory lot to the waterfront lot (for septic and accessory building use) or has a utility as a separate building lot with a view of the pond.

If the taxes have been paid, the amount paid on the value in excess of \$26,550 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

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clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in 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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Theresa M. and Frank B. Hawkins, Taxpayers; and Chairman, Selectmen of Springfield.

Dated: June 17, 1994

Melanie J. Ekstrom, Deputy Clerk

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redated and recertified June 30, 1994