

**Joseph D. Luis**

**v.**

**Town of Wakefield**

**Docket No.: 12761-92-PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$121,200 on a vacant, 1.511-acre lot (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 203.09(a); 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) any construction on the Property would be difficult because the land is steep;
- (2) the Property's assessment after the subdivision far exceeds the assessment



was undeveloped and needed site work for construction. Yet, the Town's assessment methodology does not appear to reflect this reality. Therefore,

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the board has made a conservative adjustment in the condition factor to reflect the Property's undeveloped factor.

None of the Taxpayer's other arguments warrant any further reduction. To the extent the Property was overassessed, the Taxpayer should have submitted some market information to indicate how the assessment was disproportional. The Taxpayer, however, did not do so. Furthermore, the Town correctly increased the total assessment when the Taxpayer subdivided the lot, thereby creating two independent economic units.

If the taxes have been paid, the amount paid on the value in excess of \$113,700 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 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 "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A

reconsideration 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 in law.

Thus, new evidence and new arguments are only allowed in very limited

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circumstances as stated in board rule TAX 201.37(e). Filing a reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph D. Luis, Taxpayer; and the Chairman, Selectmen of Wakefield.

Dated: December 29, 1994

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Lynn M. Wheeler, Deputy Clerk

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v.

Town of Wakefield

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**ORDER**

This order responds to the Town's "request for clarification." The Town is not obligated to apply the board's ordered assessment for 1994 because the Town underwent a general revaluation.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph D. Luis, Taxpayer; and Chairman, Wakefield Board of Selectmen.

Dated: January 13, 1995

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Melanie J. Ekstrom, Deputy Clerk