

**Ralph L. and Catherine C. Chandler**

**v.**

**Town of Mason**

**Docket No.: 12793-92 DE**

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a and RSA 79-A:15, the "Town's" 1992 assessment of \$2,100 on Lot 45, a vacant, 61-acre lot in current use; and \$82,300 (land \$14,450; building \$67,850) on Lot 20, a 13.02-acre lot with a house. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessments were 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 met this burden and proved disproportionality.

The Taxpayers argued Lot 20 had been placed under a 10 year discretionary easement in 1977 and that such easement should continue because the Town has never released the lien on file at the registry despite their letter of January 20, 1993 stating the discretionary easement ended in 1987.

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The Town acknowledged in a letter requested by the board, dated September 20, 1993, that a discretionary easement was granted for Lot 20 in 1977.

**Board's Rulings**

**1) Discretionary Easement**

The board finds that the law with respect to discretionary easements changed in 1979 so that after a ten year period elapsed it was no longer available if the subject property was qualified for current use.

While there was no actual description of the term of the discretionary easement, the evidence supports it was the parties understanding that the term was for 10 years (1987). However, the Town failed to meet the notice requirement (RSA 79-A:17 III) to inform the Taxpayers of the expiration date until 1993. As of the date of this hearing the lien recorded on the 1977 discretionary easement had never been released by the Town.

Based on the evidence the board orders the Town:

- (1) to release the discretionary lien on lot 20 and lot 45; and
- (2) to file a new current use lien in the Registry of Deeds to recognize current use granted by the Town in 1992 on lot 20 and 45.

The board orders the Taxpayers to submit to the Town an updated current use application with a map of lots 20 and 45 showing the location of the house and any other improvements as well as a description and classification of the number of acres remaining in current use as required by the current use board.

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**2) Building Value**

The Town's representative, Mr. Compton French, indicated the Town would agree to an adjusted assessment of \$77,250 (land \$14,450; building \$62,800) on lot 20 for tax year 1992 to correct the listing and value errors on the house.

If the taxes have been paid, the amount paid on the value in excess of \$77,250 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Paul B. Franklin, 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 Ralph L. and Catherine C. Chandler, Taxpayers; and Chairman, Selectmen of Mason.

Dated: December 21, 1993

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Valerie B. Lanigan, Clerk