

Craig and Leslie Buchanan

v.

Town of Weare

Docket No.: 12901-92-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$30,400 on a vacant, 3.4-acre lot (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 frontage is very steep, making it difficult to improve or sell the Property;
- (2) vacant-land values have declined 50%; and

(3) an April 1, 1992 appraisal estimated a \$15,000 value.

Page 2

Buchanan v. Town of Weare

Docket No.: 12901-92-PT

The Town argued the assessment was proper because:

- (1) the Property has electric utility and a view, which increases its value;
- (2) the 1990 revaluation used 101 vacant-land sales to set the parameters in valuing vacant lots, including the Property;
- (3) the assessment considered the added site work and costs needed to build a driveway;
- (4) the Taxpayers' appraisal was flawed because the comparables were not comparable in size or topography, and the appraiser's adjustments were questionable; and
- (5) four comparable sale prices, when equalized by the Town's 124% equalization ratio, supported the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$27,200. This assessment is ordered because:

- 1) in reviewing the comparably assessed properties submitted by the Town, the board finds the topography adjustment should be X80 to recognize the added cost for site preparation work and difficulty in getting to the house site; and
- 2) the board's judgment that the Property's steep topography warrants a 20% reduction.

Arriving at a proper assessment is not a science, but is a matter of informed judgment and experienced opinion. See Buchman v. City of Manchester,

119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment.

Page 3

Buchanan v. Town of Weare

Docket No.: 12901-92-PT

Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence). Finally, judgment is the touchstone of reaching a value conclusion.

The board did not rely on the Taxpayers' appraisal report because the appraiser did not provide any information as to how he adjusted the comparables, did not include any photographs of the comparables and the board found the Town's rebuttal information relative to the sales' comparability convincing.

If the taxes have been paid, the amount paid on the value in excess of \$27,200 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.

Page 4
Buchanan v. Town of Weare
Docket No.: 12901-92-PT

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Craig and Leslie Buchanan, Taxpayers; and the Chairman, Selectmen of Weare.

Dated: December 29, 1994

Lynn M. Wheeler, Deputy Clerk

0009