

John F. and Lois R. Manning

v.

Town of Barnstead

Docket No.: 13398-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$62,700 (land \$40,200; buildings \$22,500) on a 9.9-acre lot with a shed (the Property). (The building assessment is for 12 campsites.) 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's water/electric lines are either incomplete or nonfunctional;

(2) the Property was purchased for \$17,000 on June 18, 1991;

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(3) a January 1, 1992 appraisal estimated a \$21,000 value;

(4) there was no market for lots under 2 acres in size and, therefore, subdividing the Property would be unprofitable;

(5) the Property's highest and best use was as vacant land;

(6) a smaller lot across the street was assessed at \$18,400, and another larger lot with more frontage than the Property was assessed at \$18,000; and

(7) the comparable lots were comparable because they are in close proximity to the Property and only the land was compared not improvements.

The Town argued the assessment was proper because:

(1) the land value was based on arm's-length sales spanning a 3-year period;

(2) even though the Property has 500' of road frontage on a paved road, the paved-road price was not used to set the value because of the Property's access on Colbath Road, the ditch on the paved road, and the double frontage on the corner;

(3) the Property has enough road frontage for four house lots;

(4) the water lines, septic system and lines, and electrical poles and lines at each site comprised the Property's building value, not the shed; and

(5) the Taxpayer's appraiser's comparables were not comparable because they fail to consider the type of road, access and improvements.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$31,060. This assessment was calculated by:

1) subtracting the \$1,500 water and sewer assessment;

- 2) subtracting the \$22,000 attributed to the campsites; and
- 3) making the excess frontage adjustment of 22% that the Town stated

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would have been provided if the campsites had not been assessed ($\$48,000 \times .9$ (topo. dep. %) $\times .78$ (excess front. %) $\times .8$ (undev. dep. %) = $\$26,960 + \$4,100$ for the rear acres = $\$31,060$).

The board, after reviewing the material, concludes the campsites no longer have any economic value, and therefore, they should not have been assessed. The board concludes the highest and best use of this Property is as vacant land for future sale and development. After making these conclusions, the board merely adjusted the assessment as indicated above. We did not, however, adopt the Taxpayers' appraiser's assessment analysis because that appraiser did not indicate how the Property's assessment should be changed. Rather, the appraiser just did a broad-brush approach without considering the individual attributes of the Property as compared to the other properties.

If the taxes have been paid, the amount paid on the value in excess of \$31,060 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 thirty (30) 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).

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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 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

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John F. and Lois R. Manning, Taxpayers; and Chairman, Selectmen of Barnstead.

Dated: February 22, 1995

Lynn M. Wheeler, Deputy Clerk