**Michael and Sandra Vermouth**

**v.**

**Town of New Hampton**

**Docket No.: 13887-93PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of $76,100 on a vacant, 5-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 denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

1) it exceeded the general level of assessments based on comparable properties;

2) comparables that were taxed as residential/rural (even though businesses have been allowed) had much lower taxes;

3) the Property's April 1, 1993 fair market value was between $45,000 and $49,900 based on current market prices; and

4) the Property was under contract for $45,000 (September 1994).

The Town argued the assessment was proper because:

1) the Taxpayers' comparables, with the exception of one, are in the residential zone and had no validity because the Taxpayers' Property is in the commercial zone;

2) market activity has increased, but arm's-length transactions in the commercial zone do not exist; therefore, the Taxpayers' contract price is tenuous and speculative and does not constitute a reliable market indicator; and

3) the Taxpayers' assessment was proportionate and equitable based on three sales in the Taxpayers' area.

Board Findings

Based on the evidence, the board finds the Taxpayers did not show overassessment. The subject Property, located in a commercial zone, contains five useable acres with 503 figured-front feet on Rt. 132 North. The Town adjusted the Property by -30% undeveloped, -23% excess frontage, and -20% topographic limitations. All but one of the Taxpayers' comparables are in a residential zone, and the other is zoned commercial. It would be incorrect to use residential values on the Taxpayers' commercial land.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have

made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessment



generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The only evidence of the Property's value was the Taxpayers' 1994, $45,000 purchase and sales agreement, which was not even provided to the board. Furthermore, the Taxpayers did not explain whether the Property had been reasonably marketed and whether the sale qualified as indicative of market value.

We find the assessment under appeal is reasonable and fair.

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). 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. Generally, if the board denies the rehearing motion, an

appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.



SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Sandra Vermouth, Taxpayers; and Chairman, Board of Selectmen.

Dated: September 26, 1995

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Melanie J. Ekstrom, Deputy Clerk