

John L. and Anne M. Goudreau

v.

Town of Frankestown

Docket No.: 14044-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments of: \$42,600 on "Lot 59", a vacant 3.01-acre lot; and \$46,900 on "Lot 59.1", a vacant 4.88-acre lot (the Properties). For the reasons stated below, the appeal for abatements 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 carried their burden.

The Taxpayers argued the assessments were excessive because:

- (1) the land was purchased as a single 8.0-acre lot for \$42,000 in 1981; the land was subdivided into 2 parcels in 1989;
- (2) the lots were listed with a broker at \$27,900 each in 1992 and 1993;
- (3) the lots were subsequently listed for sale in the newspaper at \$17,500 each or a package deal of \$30,000;

- (4) the wetland areas and steep topography of the lots make them less desirable than others in the area; and
- (5) the fair market value as of April 1993 was \$18,000.

The Town argued the assessments were proper because:

- (1) in 1990, the Town was reappraised by AVITAR and a unit price of \$45,000 for a 3.0-acre lot was determined at that time;
- (2) in 1993, the Town reviewed property values and reduced the unit price to \$42,600;
- (3) the Town planning board determined the lots were buildable (minimum of 3.0-acres, 2.0-acres of which have to be buildable);
- (4) the Taxpayers' comparable sales were not arm's-length transactions; and
- (5) as all land was valued on the same basis, the assessment is fair.

Board's Rulings

Based on the evidence, we find the proper assessments to be:

Lot 59 - \$25,550

Lot 59-1 - \$27,700

The board took into consideration both the evidence of the several years of marketing the lots and the testimony of Mr. Walter Eriksen, a licensed designer of sub-surface disposal systems for the State of New Hampshire. The combined evidence indicates that these lots would be less desirable than others in the area based on the wetland areas and steep topography. The Town challenged the arm's-length nature of the sales submitted by the Taxpayers and based on the Town's evidence, the board has given the sales little weight.

However, the board did review the assessments of the comparables supplied by the Taxpayers and does find that adjustments to the Properties are warranted.

Therefore, the board has made the following adjustments to the assessments:

Lot 59

# OF UNITS	TYPE	UNIT PRICE	CODE	FACT.	COND.	LAND VALUE
3.000	AC	\$42,600	E	1.00	.60	\$25,550
0.010	AC	\$2,300	X	1.00	.50	0
TOTAL LAND VALUES				\$25,550		

Lot 59-1

# OF UNITS	TYPE	UNIT PRICE	CODE	FACT.	COND.	LAND VALUE
3.000	AC	\$42,600	E	1.00	.60	\$25,550
1.880	AC	\$2,300	X	1.00	.50	\$ 2,150
TOTAL LAND VALUES				\$27,700		

If the taxes have been paid, the amount paid on the values in excess of \$25,550 for Lot 59 and \$27,700 for Lot 59-1 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, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1994 and 1995. 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 "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

George Twigg, III, Chairman

Michele E. LeBrun, Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John L. and Anne M. Goudreau, Taxpayers; and Chairman, Selectmen of Frankestown.

Dated: May 22, 1996

Valerie B. Lanigan, Clerk

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John L. and Anne M. Goudreau

v.

Town of Frankestown

Docket No.: 14044-93PT

ORDER

This order responds to: 1) the Town's request for reconsideration filed with the board on June 6, 1996; and 2) the Taxpayers' letter filed June 20, 1996 with the board requesting enforcement of the board's ordered assessment.

Request for Reconsideration

For the reasons that follow the board denies the Town's motion.

The Town in its motion states that the comparable assessments the board reviewed are not comparable and do not contain comparable adjustments to justify the abatement ordered by the board. To clarify the board's decision of May 22, 1996, the board's adjustments to the two lots were based primarily on the testimony as to the physical characteristics of the lots (steep topography, wet areas and the difficulty to develop the lots for residential use) and on the Taxpayers' testimony of the attempts to market the Property for substantially less than the assessed value.

Taxpayers' Enforcement Letter

The board treats the Taxpayers' June 20, 1996 letter as a motion for enforcement in accordance with TAX 203.05 (j). Before ruling on the Taxpayers' motion, the board orders the Town to answer the motion within thirty days of this order. TAX 203.05 (m). After receiving the Town's response the board will issue an order relative to the Taxpayers' motion.

Chairman Paul Franklin signs this order with Member Michele LeBrun due to Mr. George Twigg III having retired since the decision. Chairman Franklin reviewed the file and listened to the record of the hearing to be able to participate in this order.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John L. and Anne M. Goudreau, Taxpayers; and Chairman, Selectmen of Frankestown.

Date: July 23, 1996

Valerie B. Lanigan, Clerk

John L. and Anne M. Goudreau

v.

Town of Frankestown

Docket No.: 14044-93PT

ORDER

This order responds to the "Taxpayers'" June 20, 1996 letter which the board treats as a motion for enforcement in accordance with TAX 203.05 (j). The Taxpayers raised concerns about their RSA 76:15-a (first estimated tax bill) tax bill not reflecting the board's ordered abatement for the property for the 1993 tax year and subsequent years. The "Town" responded in a letter received on July 26, 1996 that the Taxpayers had been told that the final tax bill in December of 1996 would reflect the ordered assessment by the board but that they should pay their first bill to avoid the 12% interest on the unpaid balance.

First, the board finds the statutes are silent on this issue. However, RSA 76:16-a does provide for the estimated tax to be based on "the prior year's assessed valuation" and "the prior year's tax rate". (Emphasis added.) Therefore, it is appropriate for the Town to continue to estimate the Taxpayers' first bill based on the previous year's unabated assessment because the appeal timelines from the

board's May 22, 1996 decision had not concluded by the time the Taxpayers received

their 76:15-a tax bill in early June.

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If the converse were true, i.e., the board ordered an abatement and all appeal timelines had concluded prior to the time the Town created its estimated tax bill, the Town should then base its estimated tax on the abated assessed value.

Lastly, while the board has concluded that the Town is not obligated to refund on the first bill the taxes estimated in excess of the abated assessment, good public relations and administration would encourage it.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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 John L. and Anne M. Goudreau, Taxpayers; and Chairman, Selectmen of Francestown.

Date: August 15, 1996

Valerie B. Lanigan, Clerk