

**O.D. Fessenden Co.**

**v.**

**Town of Brookline**

**Docket Nos.: 14351-93PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$20,400 on a vacant, 7.1-acre lot (the Property). The Taxpayer also owns, but did not appeal, 9 other lots in the Town with a combined, \$63,477 assessment (some of the lots are in current use). For the reasons stated below, the appeal for abatement is granted consistent with the Town's recommended revised assessment.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer carried the burden of proof.

The Taxpayer argued the assessment was excessive because:

- (1) proper consideration has not been given to the substantial cost of improving the Class VI road to access the Property;
- (2) the lot cannot be built on unless the road is upgraded to a class V road; and

(3) the lot is worth only the same value as backland at \$600 per acre.

The Town recommended the assessment be reduced to approximately \$12,400 based on a sale of lot 18, also located on the same class VI road.

The Town argued the revised assessment was proper because:

- (1) the basic residential site value was reduced from \$40,000 to \$14,000 to reflect the value today of the future benefit of a potential housesite; and
- (2) lot 18 sold in August 1995 for \$12,900 and indicates a value for a lot on a Class VI road at approximately \$1700 per acre.

### **Board's Rulings**

Based on the evidence, we find the Town's recommended reduced assessment of \$12,400 to be reasonable and supported by the comparable sale of lot 18.

If the taxes have been paid, the amount paid on the value in excess of \$12,400 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.

The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); Appeal of Nashua, 138 N.H. 261, 264-265 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to O.D. Fessenden Co., Taxpayer; and Chairman, Selectmen of Brookline.

Dated: April 3, 1996

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Valerie B. Lanigan, Clerk