

William C. and Luz Maria Corkery

v.

Town of Carroll

Docket No.: 14604-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessments on the following "Properties."

Lot No.	Assessment	Description
53-5	\$ 25,000	vacant, 1.39-acre lot
54-6	\$ 13,100	vacant, 2.11-acre lot
55-7	\$ 22,800	vacant, 1.84-acre lot
56-8	\$ 28,800	vacant, 3.02-acre lot
57-9	\$ 27,200	vacant, 2.98-acre lot
59-11	\$ 31,100	vacant, 2.16-acre lot

The Taxpayers also own, but did not appeal, four other properties in the Town with combined assessments of \$216,351. 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 and proved disproportionality.

The Taxpayers argued the assessments were excessive because:

- (1) the Twin Mountain airport abuts the Properties;
- (2) the runway for the airport abuts lots 5 and 6, and the airplanes access the airport by flying over lots 9, 8, 5, 6 and 7 with an airport-restriction zone over the Properties;
- (3) a 1993 engineering report showed the Properties as having wetlands and questionable buildability;
- (4) the Town exempted the airport from taxes, but the Town will not recognize the airport restrictions on the Properties' assessments; and
- (5) the Properties are subject to a snowmobile easement.

Following the Taxpayers' presentation, the board concluded assessment adjustments were warranted. These adjustments and the reasons for those adjustments are stated below.

Board's Rulings

The board orders the Town to use the following assessments.

Lot No.	Assessment	Description
53-5	\$ 20,000	vacant, 1.39-acre lot
54-6	\$ 13,100	vacant, 2.11-acre lot
55-7	\$ 20,300	vacant, 1.84-acre lot
56-8	\$ 25,400	vacant, 3.02-acre lot
57-9	\$ 22,200	vacant, 2.98-acre lot
59-11	\$ 22,800	vacant, 2.16-acre lot

Assessments must be based on market value. RSA 75:1. In setting assessments, the municipality is required to consider all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Certainly, any prospective purchaser of lots 5, 6, 7, 8, 9 and 10, would consider the airport-exclusion zone that is shown on the subdivision plan. The parties stated there was uncertainty about the effect of the exclusion zone. The Town stated it would allow a building permit on lots within the exclusion zone. The Taxpayers, however, stated that based on their research and discussions, they probably would not be allowed to build within the exclusion zone. Certainly, any prospective purchaser of the Properties would want to know more about the exclusion zone and what effect the exclusion zone would have on the Properties' values and uses. While the Town may allow development in the exclusion zone, even with the restriction on the subdivision plan, state/federal airport administration officials and the airport owners could very well take action against any development within the exclusion zone.

The lack of any written easement or ordinance¹ governing the exclusion zone would make any prospective purchaser anxious. The steps required to clarify the effect of the exclusion zone could require: a) returning to the planning board for deletion from the plan (which would not satisfy the airport officials' or the airport owners' concerns); b) filing a quiet title action or declaratory judgement action to remove/define the exclusion zone; or

¹ After the hearing, the board reviewed RSA 424:4, 5, which involve local zoning regulations for airports. Neither party presented any such regulations, and the board recalls asking the parties about such regulations and being told that none existed.

c) working with the various entities to clarify or extinguish the exclusion zone. All of these steps would require substantial time, effort and money, affecting the Properties' values. The above adjustments to lot 5, 6, 7, 8, 9 and 10 appear to reasonably reflect this issue.

The Taxpayers, however, should be aware that if the exclusion zone issue is resolved or clarified or if a lot is developed, the Town would be justified in adjusting the assessments accordingly.

The board also concludes that the adjustments to lot 11's assessment are justified given the access and view issues, which the Town admitted were not considered in the original assessment.

If the taxes have been paid, the amount paid on the value in excess of revised assessments 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

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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

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 William C. and Luz Maria Corkery; Taxpayers; and Chairman, Selectmen of Carroll.

Dated: March 28, 1996

Valerie B. Lanigan, Clerk

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