

Susan & Frank Morse

v.

Town of Sunapee

Docket No.: 14609-93PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$246,600 (based on the Town's July 1994 adjustment). 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 land assessment exceeded the land assessment on an adjacent nearby identical lot;
- (2) the land should have been assessed "SWF" (severe topography) as was the right-of-way lot (10/58);

- (3) an October 1993 appraisal estimated a \$166,000 value;
- (4) "Lot 57," a similar-sized abutting lot also owned by the Taxpayers, has been on the market since May 1994 at \$155,000 without any offers;
- (5) in April 1994, a realtor suggested a \$125,000 listing price for Lot 57;
- (6) it exceeded the Property's value based on comparable sales; and
- (7) the assessment should have been \$160,000.

The Town recommended further reducing the building assessment, resulting in a \$241,600 assessment. The Town argued the adjusted assessment was proper because:

- (1) based on adjustments to the Taxpayers' 3 comparables, the assessment was fair;
- (2) the assessment included the correct adjustments; and
- (3) no further adjustments were warranted.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$225,600 (land, \$208,800; building, \$16,800), which was calculated by reducing the condition factor by 25 for the underdeveloped nature of the lot including possible demolition costs. The board makes this decision for the following reasons.

- 1) It is difficult to value small waterfront lots with existing camps. These lots are often in transition because an individual might consider buying such a property, tearing down the existing camp and then constructing a new house. While these older camp buildings may have limited remaining utility, the camps provide some value to an owner or prospective purchaser

because the Property can be occupied until renovation or reconstruction begins and because Page 3
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the existing buildings may provide a grandfathered-status to the Property. The Taxpayers assumed the lot should have been assessed as if vacant, but the Town asserted the Property was properly assessed as developed. The board agrees with the Town. The board, however, concludes the land condition factor should be reduced by 25 to reflect the underdevelopment of the lot. Here, the value of the land far exceeds the value of the improvements, and this situation would probably prompt a purchaser to renovate or reconstruct at some point.

2) The board did not accept the Taxpayers' appraisal because it valued the Property as if vacant, and as explained above, the Property should be valued as developed. Even if the camp was to be demolished, certain site improvements have already been made that increase value due to lower development costs. Additionally, the Town raised sufficient issues about the appraisal's comparables and the adjustments made, including whether one of the sales was even an arm's-length sale and whether the appraiser made sufficient adjustments for location.

3) While the Taxpayers' information concerning the realtor's estimate for Lot 57 and the listing of Lot 57 was some evidence of market value, we again return to our basic conclusion that the appealed Property has a value in excess of a vacant lot.

If the taxes have been paid, the amount paid on the value in excess of \$225,600 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. Until the Town undergoes a
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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). 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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Susan & Frank Morse, Taxpayers; and Chairman, Selectmen of Sunapee.

Date: October 13, 1995

Melanie J. Ekstrom, Deputy Clerk

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