

Ellen S. Sheridan

v.

Town of Campton

Docket No.: 14842-93PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1993 assessment of \$20,500 on a vacant, 1.05-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the 1.0-acre lot, located in a residential development known as Waterville Estates, is unimproved, quite steep and has a lot of ledge and there is a question as to whether or not the lot can be developed;
- (2) access to the site is steep (by 4-wheel drive) which limits its market appeal;
- (3) the Property has been on the market since 1991 for \$8,500 and no offers have

been made;

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(4) the Property was offered as a gift to Trust for N.H. Lands and it declined to accept; and

(5) two recent sales in the development suggest the Property would sell for \$5,000.

The Town argued the assessment was proper because:

(1) recent sales in the development and the sale of an adjoining lot in May 1993 for \$25,000 support the assessment; and

(2) there is a wide range of selling prices in the development due to steepness, rock and oversupply of lots.

Board's Rulings

Based on the evidence, we find the proper assessment should be \$8,500.

As both parties agreed the Property is a very difficult one to get a definitive estimate of market value. Sales of recreational lots in the Waterville Estates have been sporadic due to oversupply of lots, variability of the topography and the ability to install septic systems.

The board finds that both the location, topography and the oversupply of similar lots significantly depresses the value of the Property. This is supported by the fact that the Property has been listed for sale since 1991 for \$8,500 and no offers have been forthcoming. A similar lot nearby which sold to Winterbrook Realty, Inc. in 1993 for \$25,000 would appear to support the assessment. However, the board finds that the sale price may not be truly representative of market value as the grantee is a significant real estate dealer and developer in Waterville Estates and the sale could likely be at a price intended to prop up the market for lots in the development.

The board is not entirely comfortable or satisfied with this ruling. However, given the market data available an \$8,500 assessment seems more reasonable than the Town's current assessment. If the Property should ever be sold and/or developed, the Town should review the assessment especially if the Property is definitively determined to be buildable.

If the taxes have been paid, the amount paid on the value in excess of \$8,500 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

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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret H. Nelson, Esq., Counsel for Ellen S. Sheridan, Taxpayer; and Chairman, Selectmen of Campton.

Dated: April 3, 1996

Valerie B. Lanigan, Clerk

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