

**Maurice Viens**

**v.**

**Town of Carroll**

**Docket No.: 15137-94PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of \$10,800 on Lot 19, a vacant, 2.5-acre lot; and \$26,500 (land \$23,600; buildings \$2,900) on Lot 20, a 1.35-acre lot with a camp (the Properties). The Taxpayer 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 abatements is granted to the Town's revised assessments.

The Taxpayer has the burden of showing the assessment was disproportionately high or was unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried

this burden.

The Taxpayer provided a June 1994 appraisal, which estimated a \$19,000 value if both lots were considered as one lot and a \$20,500 value if the lots were considered separate. The Taxpayer further argued that both lots were purchased in May 1991 for \$9,000 and that comparable lots in the Town had lower assessments.

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The Taxpayer argued the assessment on Lot 19 was excessive because:

- (1) the lot is nonconforming; and
- (2) the lot is burdened by a 100-foot right-of-way to PSNH.

The Taxpayer argued the assessment on Lot 20 was excessive because:

- (1) the camp is 12' x 26' with an attached trailer, the camp lacks electricity, water and insurance;
- (2) the lot is a back lot with limited access; and
- (3) the lot would need a right-of-way across Lot 19 for access.

The Town reduced the assessment on Lot 19 to \$2,700 to address the lot's shape, treating the lot as a back lot. The assessment on Lot 20 was reduced to \$21,700 to address its value as a building lot and stated this lot should also be considered backland. The Town provided two comparable sales to support the adjustments. The Town proposed this settlement to the Taxpayer; however, the Taxpayer refused, preferring to continue his appeal to this board.

#### **Board's Rulings**

Based on the evidence, the board finds the Town's recommended assessments are appropriate. Therefore, the assessment on Lot 19 shall be

\$2,700, and the assessment on Lot 20 shall be \$21,700.

In 1994, the revenue department determined that assessments in the Town were approximately 15% more than market value. Therefore, to compare these revised assessments to the appraisal, the assessments must be divided by the 1.15 ratio to arrive at an equalized assessment. The revised assessments total \$24,400 in assessment but only \$21,200 in equalized assessment, which should equate approximately to market value ( $\$24,400 \div 1.15 = \$21,200$ ). The Taxpayer's appraisal estimated a value at \$19,000 to \$20,500. The revised assessments are in line with this appraisal.

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If the taxes have been paid, the amount paid on the value in excess of \$2,700 on Lot 19 and \$21,700 on Lot 20 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 1995 and 1996. 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 "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

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Ignatius MacLellan, Esq., Member

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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 Maurice Viens, Taxpayer; and Chairman, Selectmen of Carroll.

Date: January 15, 1997

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Valerie B. Lanigan, Clerk

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