

Carol Ober

v.

Town of Candia

Docket No.: 15384-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$19,000 on a vacant 13.58-acre lot (the Property). The Taxpayer also owns, but did not appeal, another lot (Lot 9) in the Town with a \$107,500 assessment. 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 her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the assessment has been adjusted numerous times, causing confusion;
- (2) the lot is a rocky hill and lacks road access;
- (3) the building inspector said the Property could not be built on because it lacks frontage and because there is no extra frontage on Lot 9 to allow a right-of-way to the Property; and

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(4) the Property was worth \$12,000 based on an April 1994 appraisal.

The Town argued the assessment was proper because:

- (1) comparable assessments supported the assessment;
- (2) the Property has access via Lot 9; and
- (3) the Property has abutter value and was assessed as rear acreage.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$16,600. This assessment was calculated by increasing the undeveloped factor to -65 (or x .35). The board concluded the Property should be considered as part of Lot 9. According to the department of revenue manual, the larger combined lot would result in an increase of the adjustment factor to -65. The board determined the Property should be assessed as part of Lot 9 for several reasons: 1) the Property lacks its own access, and according to the building inspector, the Property is unbuildable; 2) the Property is connected to Lot 9 by only 80 feet, warranting some adjustment; 3) at this time, the Property apparently is worth more as an appendage to Lot 9; and 4) the Property, based on the Taxpayer's testimony, is nothing more than a hill, bringing into question its developability.

The board did not adopt the Taxpayer's \$12,000 appraised value because:

- 1) the board's revisions are based on the Town's own assessment methodology, ensuring consistency with other assessments;
- 2) the appraisal was just one person's value opinion; and
- 3) the access adjustments were not supported.

The revised assessment equates to a \$14,300 equalized value (\$16,600 ÷ 1.16 equalization ratio). This value seems appropriate for the Property.

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If the taxes have been paid, the amount paid on the value in excess of \$16,600 for the Property and \$107,500 for Lot 9 (total \$124,100) 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. 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Carol Ober, Taxpayer; and Chairman, Selectmen of Candia.

Date: October 11, 1996

Valerie B. Lanigan, Clerk

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ORDER

On November 4, 1996 the board received a motion for clarification from the Taxpayer. The Taxpayer requested whether the proper assessment is \$16,600 or \$14,300.

As found on page 2 of the October 11, 1996 decision, the proper assessment is \$16,600. This is the value on which the abatement should be calculated.

The \$14,300 figure is simply the calculated market value that the assessment of \$16,600 indicates by applying the town-wide equalization ratio of 1.16 ($\$16,600 \div 1.16 = \$14,300$).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Carol Ober, Taxpayer; and Chairman, Selectmen of Candia.

Date: November 20, 1996

Valerie B. Lanigan, Clerk

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