

John H. and Barbara L. Windhurst

v.

Town of Hopkinton

Docket No.: 15976-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$160,900 (land \$114,000; current use \$3,700; buildings \$43,200) on a 28.43-acre lot (26.43 acres in current use; 2 acres not in current use [NICU]) with five log cabins (the Property). The Taxpayers also own, but did not appeal, two other lots in the Town with a combined, \$485,400 assessment. 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 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers carried this burden.

The Taxpayers argued the assessment was excessive because:

- (1) an April 1991 appraisal estimated the market value to be \$139,000-\$140,000;
- (2) a letter of opinion of value estimated the value as of November 1993 to be \$75,000;

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- (3) the Trustee (Bank of NH) mismanaged the Property and the Taxpayers filed a lawsuit against the bank who agreed to sell the Property to them for the \$75,000 appraised value;
- (4) only 2 cabins are useable;
- (5) the Town will not allow any development on the Property without the Taxpayers' building a road which is not cost effective; and
- (6) the Taxpayers' did not accept the Town's offer to purchase the Property because they wish to retain it for family use.

The Town argued the assessment was proper because:

- (1) the Town owns the adjoining Kimball Lake, 3 cabins and land abutting the Property which was donated to the Town;
- (2) the Property is located in the Hopkinton Village Precinct and the Town made an offer to the Trustee in 1993 and again in 1994 to purchase the Property for \$209,000;
- (3) there are two cabins being used on the Property and the land NICU is being assessed as two homesites;
- (4) if all of the cabins were razed, all of the land could be placed in current use; and
- (5) the assessment is in line with the amount the selectmen would have

recommended as a reasonable price for the voters to approve at town meeting.

Following the hearing, the board viewed the Property and inspected the condition of the buildings.

Board's Rulings

Based on the evidence and the view, the board finds the proper assessment to be \$111,350 (land \$74,250; buildings \$37,100). This assessment is based on finding the 2.0 acre site value should be adjusted for access and its generally undeveloped nature and reducing the 3 uninhabitable buildings to total value of \$700.

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In this case, the board was presented with 3 indications of market value: 1) the 1991 Capital Appraisal Associations appraisal for \$140,000; 2) the 1993 letter of opinion of value of Capital Appraisal Associates for \$75,000; and 3) the Town's offer to the Taxpayers' predecessor in title, the Harold Kimball Trust, for \$209,000.

The board finds none of the indications of value conclusive evidence of the Property's value. Both the 1991 and 1993 values by Capital Appraisal Associates attributed no value to the Property's proximity to and view of Kimball Pond. While indeed the pond is very shallow, it is a scenic amenity that would be generally recognized by the market and should have been adjusted for in the appraisals. Further, the reduction in the value from the 1991 appraisal to the 1993 opinion of value is of such magnitude that it raises questions as to the credibility of the appraisals notwithstanding the general real estate market decline during that period.

Initially, the board was inclined to not grant an abatement based on a finding that the highest and best use of the Property was to be owned by the Town to augment the Town's existing property on Kimball Pond to the south and the school property to the north. As the Town testified, surely the selectmen's willingness to go to town meeting to request an appropriation of \$209,000 is some evidence of the Property's value to the Town. However, after viewing the Property and analyzing the evidence relative to its highest and best use, the board concludes the Town's site value for the 2.0-acres NICU is excessive.

In determining market value as the basis for assessment, it should be based on the value of the property at its highest and best use to the general market not a specific owner. In this case, the evidence of value to the Town is evidence of value in use for a specific owner and purpose as opposed to evidence of value in exchange on the general market. Except for assessing special purpose buildings (eg. utility property, churches, specialized industrial plants, etc.), value in exchange rather than value in use is the

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normal criterion for assessing property. See generally Appraisal Institute, The Appraisal of Real Estate 11th ed. 24-26 (1996); The International Association of Assessing Officers, Property Appraisal and Assessment Administration 53 (1990).

This concept is highlighted in that the Town, if it chose to acquire the Property by eminent domain, would be required to have an appraisal done valuing the Property at its highest and best use. Based on the evidence, the zoning would limit the highest and best use to a single lot for either a new

dwelling or continued single ownership of the existing cottages. Either use does not justify the Town's assessment of the 2.0-acres NICU to be equivalent to two distinct homesites.

Based on the view, the board concludes that the area cleared around the cottages encompasses the most useful area of the lot. This area, however, is some distance from Route 202 and is very minimally developed. Therefore, the board has applied an access factor of X.90 and an undeveloped factor of X.80 to recognize the 2.0-acre site is not similar to other residential sites in the neighborhood ($\$140,000 \times .70 \times .90 \times .80 = \$70,550$ plus $\$3,700$ land NICU).

While on the view, the board determined that the 3 westerly most cottages (including the burned one) have minimal storage value. Specifically, the burned cottage has zero contributory value; the cottage on card 4 is in very poor condition and should be assessed at \$200 for its shed utility; the cottage on card 5 due to its present condition and lack of utilities also has only shed utility estimated at \$500 assessment; the 2 sheds contained on card 5 have zero contributory value due to their condition and location. From the exterior, the Town's assessments on the 2 inhabited cottages appear reasonable. In summary, the cottage assessments are:

Card 1 -	\$22,400
Card 2 -	\$14,000
Card 3 -	\$ 0
Card 4 -	\$ 200
Card 5 -	<u>\$ 500</u>
Total -	\$37,100

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In conclusion, the board determines the adjustments to the site and the cottages more accurately reflect their contributory share to the Property's

market value to the general public as opposed to the special purposes of the Town.

If the taxes have been paid, the amount paid on the value in excess of \$111,350 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 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 "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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John H. and Barbara L. Windhurst, Taxpayers; and Chairman, Selectmen of Hopkinton.

Date: April 22, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Town's" April 30, 1997 motion for reconsideration (Motion). The Motion argues the "Property's" value for the two septic systems and well should have been included in the board's April 22, 1997 decision (Decision). We agree; the values were inadvertently omitted.

Consequently, the Decision is amended on pages two, four and five as follows.

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"Based on the evidence and the view, the board finds the proper assessment to be \$122,850 (land \$85,750; buildings \$37,100)."

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"Based on the view, the board concludes that the area cleared around the cottages encompasses the most useful area of the lot. This area, however, is some distance from Route 202 and is very minimally developed. Therefore, the board has applied an access factor of X.90 and an undeveloped factor of X.80

to recognize the 2.0-acre site is not similar to other residential sites in the neighborhood ($\$140,000 \times .70 \times .90 \times .80 = \$70,550$; well and septic $\$11,500$; land NICU $\$3,700$)."

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"If the taxes have been paid, the amount paid on the value in excess of \$122,850 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 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."

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John H. and Barbara L. Windhurst, Taxpayers; and Chairman, Selectmen of Hopkinton.

Date: May 14, 1997

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Valerie B. Lanigan, Clerk