

**Frank and Gloria Palumbo**

**v.**

**Town of Haverhill**

**Docket No.: 16090-95PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$3,800 on a .81-acre vacant lot (the Property). The Town requested leave to not attend the hearing pursuant to board rule TAX 202.06(d), and therefore, this decision is based in part on material in the file. For the reasons stated below, the appeal for abatement is granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or was 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) Hampshire Lane, the Property's road, has never been built and is now

overgrown;

(2) the Property was on the market 4-5 years ago for \$5,000 without an offer;

and

(3) the assessment should be the minimum.

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### **Board's Rulings**

Based on the evidence, the board finds a proper assessment of \$1,000, which equates to an approximate market value of \$1,400.

There was a dearth of value evidence in this case. The Town did not appear and did not submit any market information. It would have been helpful if the Town had sent in a letter that listed any sales that had occurred in this development in the past several years. The Taxpayers stated they would sell the Property today for \$500 and that the Property had been on the market four or five years ago for approximately \$5,000, and no offer was received. The Taxpayers certainly made a compelling showing that the Property has limited value, especially because: 1) Hampshire Lane exists on paper but is not an improved road; 2) the clearing that occurred for Hampshire Lane has now become overgrown; and 3) the development itself has collapsed, and even though the map shows numerous lots, most of the lots in the Property's vicinity are undeveloped.

Based on the above, the board finds an assessment of \$1,000 to be appropriate.

If the taxes have been paid, the amount paid on the value in excess of \$1,000 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

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank and Gloria Palumbo, Taxpayers; and Chairman, Selectmen of Haverhill.

Date: March 11, 1997

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Valerie B. Lanigan, Clerk

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