

Patricia Clarke

v.

Town of Brentwood

Docket No.: 16136-95PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$265,500 on a vacant, 10.406-acre lot (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$224,100 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 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 Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased for \$35,000 plus approximately \$32,000 in back

taxes;

(2) the Property was originally assessed as having 14 acres and when the acreage was corrected to 10.406, the assessment went up;

(3) water is evident and flowing on the Property (tributary to the Exeter River), has steep areas, is a pie-shaped lot and the Town has not recognized

these factors;

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(4) the Property has no effective frontage along the first 330 feet because of the ponds and the last 650 feet because of the topography and State guardrails along that portion of the frontage; the effective frontage is 340 feet in the mid-section of the Property with effective acreage of 3 to 4 acres;

(5) the Property is assessed disproportionately to other sites in the Town; and

(6) the adjusted assessment should be \$52,200.

The Town performed an appraisal effective April 1995 that estimated the market value to be \$175,000 and argued the market value was proper because;

(1) all sites of comparable properties along Route 125 suffer conditions of topography and wetlands;

(2) the Property could be subdivided into 2 parcels;

(3) the poor site characteristics are reflected in the sales comparison approach; and

(4) the purchase was not an arm's-length transaction because the prior owner was losing the Property for tax delinquency.

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

Based on the evidence, the board finds the proper assessment to be

\$157,400. This is based on a market value finding of \$145,750 and the Town's 1995 equalization ratio of 1.08 ( $\$145,750 \times 1.08$ ).

The board was presented with two general arguments in this case:

1) assessment comparisons to show disproportionality; and 2) various indications of market value.

#### Assessment Comparisons

The Taxpayer's agent, Mr. Richter, argued the assessment should be reduced to \$52,200. He argued this adjustment was proper based on a review of similar properties with wetland and topography issues and the adjustments that were made on those properties' assessment-record cards. Alone this argument does not carry the Taxpayer's burden. For assessments to be determined to be

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proportional they must be relative to market value and proportional to the general level of assessment within the community. RSA 75:1; Appeal of Andrews, 136 N.H. 61, 64 (1992). The determination of proper assessments must always be tethered to indications of market value (sales, leases, and other market data, etc.). In this case, two of the parcels that Mr. Richter submitted as comparable assessments sold for more than the land assessment. Without knowing all the details of the sales and the bases for those assessments, at first glance it appears that those properties may be underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to

conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

#### Market Value Indications

Several indications or estimates of market value were submitted by both the Town and the Taxpayer. Filed with the Taxpayer's appeal was a sales analysis performed by a Ken Sakurai, real estate consultant, which estimated a market value of \$79,325 to \$116,984. The Taxpayer purchased the Property in March of 1995 for \$35,000 and apparently \$32,000 in delinquent taxes. The Town's appraiser, Mr. Haven, submitted an appraisal based on all the available sales on Route 125 in Brentwood which estimated a market value as of April 1, 1995 of \$175,000.

First, the board places little weight on the sales analysis performed by Mr. Sakurai. The analysis makes no adjustments to the sales and simply arrives at an estimated market value based on unadjusted values per acre.

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Without reasonable adjustments to the comparables for the differences between them and the Property, the board is unable to place much weight on his value conclusions.

Second, the board is unable to place any weight on the Taxpayer's purchase of the Property in 1995 because the seller was under pressure to sell the Property or lose the Property to the Town for delinquent taxes. In fact, Mr. Clarke testified that he closed on the Property on Thursday, March 28,

1995 and the Town issued a tax deed the following day for the outstanding taxes. Further, Mr. Clarke stated the Property had most recently been listed for \$110,000 prior to entering into negotiations with the seller. The board finds the best evidence of market value is contained in Mr. Haven's appraisal report. The sales analyzed were all those available along Route 125 in Brentwood. Mr. Haven made reasonable adjustments to these sales for usable acreage and selling concessions. However, the board finds Mr. Haven's assumption that the market was stable and, thus, no time trending was necessary was incorrect based on a review of the Town's equalization ratios from 1994 to 1996. The board reviewed not only the town-wide ratio but also the stratified ratios performed by the department of revenue administration (DRA) for residential land only and commercial/industrial land only. Both the town-wide ratio and the stratified ratios indicate a significant increase in the market from April 1, 1994 to April 1, 1996. The town-wide ratio changed approximately 20% during that time period and of the three ratio indications is the most conservative. Because this ratio is based upon a larger number of sales than the two stratifications, the board finds the 13% change in ratios from 1995 to 1996 ( $1.08 - .94 = .14$ ;  $.14 \div 1.08 = 13\%$ ). Applying this time adjustment to Mr. Haven's sales grid produces a tight range of market value per acre (with the exception of comparable #4) from \$13,470 per acre to \$14,414 per acre. Based on this indicated value range, the board concludes that the Property had a market value of \$14,000 an acre which when multiplied by the lot size of 10.41 acres provides an indicated market value of \$145,750.

The board realizes this finding is significantly lower than the Town's

original assessment. However, based on a review of all the evidence, it appears clear that vacant land such as this with wetlands and development uncertainty would have been affected by the real estate market's downturn subsequent to the 1991 reassessment.

If the taxes have been paid, the amount paid on the value in excess of \$157,400 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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur H. Richter, Agent for Patricia Clarke, Taxpayer; and Chairman, Selectmen of Brentwood.

Date: May 9, 1997

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Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" request for rehearing or clarification (Request) filed with the board on June 9, 1997. The Request raises two general issues: 1) did the board's May 9, 1997 decision (Decision) consider the fact that the subject "Property" lacks any engineering or subdivision plans?; and 2) did the Decision consider the impact of the Property's wetland areas on its value?

The board denies the Request and for clarification purposes responds as follows.

The board reviewed its notes and the record to determine the testimony and evidence that was submitted relative to engineering, subdivision plans, building permits, and other soft development costs. Based on its review, such factors were minimally mentioned and no clear indication of their impact on value was submitted, other than a statement that such work does generally enhance value. Consequently, the board had no evidence to determine how

consequential such work would be to the value of the Property.

While not specifically mentioned in the Decision, the board agrees with the "Town" that the wetland issues of the Property are similar to those that exist in the Town's comparables, and thus, no wetland adjustment was warranted. The parties were in general agreement that the Property contained

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only one or possibly two sites for development due to its wetlands and configuration. The board's conclusion of value is based on this assumption of a reduced development area due to the wetlands.

In short, both issues raised by Request are factors that can affect market value. However, the board finds the Taxpayer did not fulfill her burden in showing how those factors specifically related to the value reduction requested at the hearing. As noted in the Decision, the assessment comparison to other wetland properties was insufficient because of the possibility of the other properties being underassessed. Consequently, the board primarily relied on the sales submitted by the Town which inherently contained wetlands and made the adjustments as noted in the Decision.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Arthur H. Richter, Agent for Patricia Clarke, Taxpayer; and Chairman, Selectmen of Brentwood.

Date: July 2, 1997

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Valerie B. Lanigan, Clerk

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