

Arthur W. Perkins

v.

Town of New London

Docket Nos.: 16725-96PT and 17405-97PT

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$97,600 and the 1997 adjusted assessment of \$97,100 on a vacant, .14-acre lot (the Property). 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 lot is unbuildable according to the Town's zoning ordinance due to the lot size and the lot's inability to accommodate an on-site septic system or

water supply; and

(2) based on an appraisal, the property's market value was \$30,000 on April 1, 1996.

The Town argued the assessment was proper because:

(1) there were no sales of truly comparable properties from which to extract market data to determine if any adjustments should be made to the Property;

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(2) there are many other lots similar to the Property, but there was only one other assessment appealed;

(3) the Property can be used for purposes other than residential; and

(4) the Taxpayer's appraiser used inferior comparables and made inadequate adjustments to the comparables.

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

Based on the evidence and arguments, the board finds the proper assessment should be \$30,900, which equates to the Taxpayer's \$30,000 value estimate.

As stated above, the taxpayer has the burden to show the assessment was excessive. This is generally done by proving that the appealed property's equalized assessment (assessment ÷ equalization ratio) exceeded the property's market value. In this case, the Taxpayer carried this burden.

The Taxpayer presented a professional appraiser who estimated that the Property had a \$30,000 market value. Despite the Town's protestations at the hearing and in a post-hearing letter, the board finds this to be a reasonable value estimate for the Property. All sides agreed, and the board concurs, that finding comparables properties for this Property is difficult.

Additionally, determining what adjustments should be made to the Taxpayer's comparables is also a difficult choice. Nonetheless, the Taxpayer's appraiser presented the best available sales and made reasonable adjustments to those sales. The Town, on the other hand, did not support the \$94,300 equalized value ( $\$97,100 \div 1.03$  equalization). Further, based on the board's experience and the evidence presented to the board, it is clear that the \$94,300 equalized value was excessive.

Based on the board's judgment of the evidence, the board finds the Property was worth \$30,000 on April 1, 1996, and therefore, the board finds a \$30,900 assessment for both 1996 and 1997 to be the proper assessments for this Property.

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In its January 11, 1999 letter to the board, the Town protested the board's ruling that allowed the Taxpayer to submit the appraisal to the board.

The board finds that protest to be premature because it is, in essence, a rehearing request. Such a request must be filed after the board issues a decision. The Town may, however, renew its protest in a rehearing motion, which can now be filed in accordance with RSA Chapter 541.

If the taxes have been paid for tax years 1996 and 1997, the amount paid on the value in excess of \$30,900 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 1998. 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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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 Arthur W. Perkins, Taxpayer; and Chairman, Selectmen of New London.

Date: February 1, 1999

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Valerie B. Lanigan, Clerk

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Arthur W. Perkins

v.

Town of New London

Docket No. 16725-97PT

ORDER

This order responds to the "Town's" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board makes the following specific responses to the Town's rehearing motion.

Concerning the Town's objection to "Taxpayer's" appraisal, the board refers the parties to the hearing record where the board ruled that the parties had, in essence, agreed to waive the 14-day rule (TAX 201.33 and TAX 201.35). Even if the board is wrong on that point, the board has the authority to waive its rules. TAX 103.02. The board decided it wanted the Taxpayer's exhibits in order to decide this case. To be fair to the Town, the board provided the Town with three opportunities to review, question and comment on the appraisal, namely:

- 1) the board recessed the hearing for 30 minutes so the Town could

review the Taxpayer's appraisal;

2) the Town cross-examined the Taxpayer's appraiser;

3) the board left the hearing record open for 20 days so the Town could submit a post-hearing memorandum on the Taxpayer's appraisal, which the Town did.

The board concludes the Town was given a fair opportunity to protect its interest in this case. The Town simply disagrees with the board's decision, but

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the board is confident the property was overassessed. The board finds the decision represents a fair review of the case, and if any error occurred, it was harmless. See TAX 201.37(d) (no rehearing for harmless error).

The board denies the Town's request to submit additional information. See TAX 201.37(e).

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

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 certify that copies of the within Order have this date been mailed, postage prepaid, to Arthur W. Perkins, Taxpayer; and Chairman, Board of Selectmen, Town of New London.

Date: March 11, 1999  
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Valerie B. Lanigan, Clerk

Arthur W. Perkins

v.

Town of New London

Docket Nos.: 16725-96PT and 17405-97PT

ORDER

This order is being issued to correct the Board's March 11, 1999 order in which the docket number was stated incorrectly. The docket number should read:

*"Docket Nos.: 16725-96PT and 17405-97PT."*

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

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Valerie B. Lanigan, Clerk

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Arthur W. Perkins, Taxpayer; and Chairman, Board of Selectmen, Town of New London.

Date: March 17, 1999

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Valerie B. Lanigan, Clerk

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