

Marion S. Ellis

v.

Town of Barrington

Docket No.: 16740-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$127,900 on a vacant, 1.12-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) an April 1, 1996 appraisal valued the Property at \$57,500; and
- (2) other comparable sales supported the appraisal.

The Taxpayer's representative testified that he was very familiar with

this real estate market, having done assessment pick ups for the Town many years ago and having done other fee appraisal work in the Town.

The Town recommended a change in the assessment to \$96,200 based on increasing the topography adjustment.

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The Town argued the proposed assessment was proper because:

- (1) the Property is a good developable lot;
- (2) the Taxpayer's appraisal relied on two sales on Mendums' Landing, but these properties are restricted by covenants that limit use of the lots, including a 100-foot buffer area from the lake and a no-dock restriction;
- (3) the Taxpayer failed to consider the value of the Property's superior size as compared to some of the comparables; and
- (4) the Taxpayer erred by adjusting the sales for access, i.e., the Property is on a unpaved road.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$89,350, which is based on a market value conclusion of \$83,500. The board reached this conclusion for the following reasons.

1) The Taxpayer's comparables number one and number three were the best market indicators provided to the board. These comparables are located on the same waterbody -- Mendums' Lake -- and both were developable lots.

2) While the Taxpayer presented the two best comparables, the board thought the value conclusion of \$57,500 was low, warranting adjustments to the appraisal.

3) The burden of proof is on the Taxpayer, and therefore, the board uses the Taxpayer's appraisal with the adjustments to comparables number one and number three as recommended by the Town. These adjusted figures equate to a market value of \$83,500, which equates to an \$89,350 assessment (\$83,500 market value x 1.07 equalization ratio).

4) The board attempted to weigh the conflicting evidence concerning the value effect of the Property being located on a nonmaintained road and the conflicting testimony concerning the value effect of the covenants on the Mendums' Landing comparables. The board does not find the access to this Property to warrant any adjustment. The board understands the conflicting

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conclusions on the covenants for comparables number one and number three, but given the burden of proof being on the Taxpayer, the board ultimately agrees with the Town.

5) The Property is of a sufficient size to provide a nice site for a lakefront home. Based on its location on the lake, it apparently affords nice views of the lake.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$89,350 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 1997. 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

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Vern J. Gardner, Jr., Agent for Marion S. Ellis, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Barrington; and Chairman, Selectmen of Barrington.

Date: June 11, 1998

Valerie B. Lanigan, Clerk

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