

Frank McNamara, William Grady and Owen Zwicker

v.

Town of Campton

Docket No.: 16754-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$65,700 on a vacant, 3.0-acre lot (the Property). 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) the Town's denial was based on a comparable adjoining lot being similarly assessed; yet this adjoining lot has better access, is larger and is not encumbered by a right-of-way as is the Property;

(2) the Property was purchased in 1995 for \$15,000 after being listed for two years for \$30,000 with no activity;

(3) a commercial sale (Map 9, Lot 14-2) for \$14,000 and a listing of Map 15, Lot 9 for \$18,000 indicates a lower value;

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(4) an appraisal by John Kelly estimated a value of \$35,000; this value is also too high and the Taxpayer would be willing to sell the Property for \$25,000; and

(5) the transfer of the Property was not amongst friends.

The Town argued the assessment was proper because:

(1) the sale of Lot 14-2 was for \$16,500, was a good buy and was of an old gravel pit with limited uses;

(2) Map 15, Lot 9 was assessed at a residential rate because it is not in as valuable location as the Property;

(3) the purchase of the Property in 1995 for \$15,000 was amongst friends and was not arms-length;

(4) several nearby parcels have been developed or are being advertised for multi-unit residential development providing some indication of the Property's highest and best use; and

(5) the adjoining lot of 5 acres is currently for sale for \$79,000.

The board's review appraiser inspected the property, reviewed the property-assessment card, reviewed the parties' briefs and filed a report with the board. This report concluded the proper assessment should be \$50,400.

The report was provided to the parties with adequate time for them to comment.

After receipt of the parties' comments, the board concluded its deliberations.

Note: The review appraiser's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the review appraiser's recommendation.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$50,400. This is based on a market value finding of approximately \$45,000 and the Town's equalization ratio of 1.12.

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The board finds the value conclusion contained in Mr. Scott Bartlett's report to be the best evidence and a reasonable attempt to estimate market value from the varied sales and listings submitted by both parties. This Property is a difficult property to value given the speculative nature as to what its highest and best use might be and any limitations as to development of the Property due to access from the adjoining property and questionable access from Route 49.

The board finds the Taxpayers' purchase of the Property in 1995 for \$15,000 and subsequent listing for \$30,000 is not conclusive evidence of the Property's market value. Given the Property's location and some of the other sales information submitted, the purchase and listing appear to be below market. It is clear from the sales and listings submitted that the sale prices vary significantly for land in this area and it is difficult to derive

an indisputable estimate of value from this data. However, the board finds Mr. Bartlett's attempt to analyze these sales and listings on price-per-acre basis to be reasonable. The board does acknowledge Mr. McNamara's comments about Mr. Bartlett's report that the adjoining property's (Map 4, Lot 16-14) value by Mr. Bartlett is a listing price and that it sold at an earlier time for \$28,500. However, as Mr. Bartlett noted in his report, a 15% adjustment was made to the listing price. Further, Mr. Bartlett notes that this parcel is the most comparable in location and has a right-of-way access issue similar to the Property. However, even if the listing price of the adjoining property is not considered, Mr. Bartlett's analysis of the other sales and listings still generally support his market value conclusion of \$45,000.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$50,400 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 1997. Until the Town undergoes a general reassessment, the Town shall use the ordered

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank McNamara, William Grady and Owen Zwicker, Taxpayers; and Chairman, Selectmen of Campton.

Date: October 1, 1998

Valerie B. Lanigan, Clerk

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