

Florence M. Hawkins

v.

Town of Canterbury

Docket No.: 16868-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$30,100 on a vacant, 24-acre lot (the Property). The Taxpayer also owns, but did not appeal, two other properties in the Town with a combined, \$106,700 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 is not buildable due to wetlands and limited access;

(2) a letter from C.A. Nichols, an appraiser, stated that the Property was unbuildable based on his review of the Property and consultation with a forester; and

(3) based on several sales of limited access and open space land, C.A. Nichols concluded a market value of approximately \$6,000.

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The Town argued the assessment was proper because:

(1) the Town assumes a building site on each parcel in the Town unless soil data is submitted to show that it is unbuildable; and

(2) the Property has several access points and has frontage on a man-made pond.

Subsequent to the hearing the board viewed the Property in conjunction with viewing other appealed properties heard the same day.

Board's Rulings

Based on the evidence and the board's view, the board finds the proper assessment to be \$12,500.

On the view, the board observed that the majority of the 24 acres was either wetland or poorly drained as evidenced by the vegetative growth. The only exception was an area on a spur road off of Blue Boar Lane where the subsequent current-use map indicates the parcel has 240 feet of frontage. In that area the board observed higher ground which appears to have a potential for placing either a seasonal camp or manufactured home similar to those in the neighborhood. Consequently, the board does not find the C.A. Nichols estimate of \$6,000 to be conclusive because it was based on the assumption of all the land being incapable of supporting any type of structure. On the

other hand, though, the board finds the assessment of \$30,100 appears excessive given the very limited utility of most of the land.

Consequently, the board, based on its experience and knowledge¹, has revised the site value calculation by applying a condition factor of .3. The board finds the resulting assessed value of \$12,500 appears reasonable based on the limited use and the generally low-valued development in the neighborhood.

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If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of 12,500 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

¹ The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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

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Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Florence M. Hawkins, Taxpayer; Alice MacKinnon, Representative for the Town of Canterbury; and Chairman, Selectmen of Canterbury.

Date: July 2, 1998

Valerie B. Lanigan, Clerk