

Steven and Penny Binette

v.

Town of Milan

Docket No.: 17068-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$128,400, which had been abated to \$124,000, on 5.0-acre lot with a single-family house (the Property). (In this decision, the term "assessment" shall mean the abated assessment.) The Taxpayers also own, but did not appeal, a vacant lot in the Town with a \$10,600 assessment. 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 to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the land is 60% ledge and also has wetlands;
- (2) the land is subject to two rights-of-ways on the frontage;
- (3) the house only has a crawl space (not a basement), which adversely affects value and utility;
- (4) the house was only 85% completed on April 1, 1996;

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- (5) the land assessment was excessive compared to other assessments;
- (6) the house assessment was excessive compared to other assessments; and
- (7) the total assessment should have been \$103,500 to \$108,500.

The Town argued the assessment was proper because:

- (1) corrections were made for house size;
- (2) the land assessment was reduced because of the rights-of-ways;
- (3) the Property has been developed, and thus, no adjustment was warranted for the ledge; and
- (4) adjusting the Taxpayers' building comparables supported the Property's assessment.

Board's Rulings

Based on the evidence, the board finds the proper assessment should be \$117,300.

The board recalculated the assessment, as shown below, for the following:

- 1) deducted 3% functional depreciation from the building for the lack of a basement;
- 2) deducted 10% from the condition factor on the first acre for lack of landscaping and 5% for ledge; and
- 3) deducted 10% from the secondary acreage for wetlands and ledge

(preserving the original 10% for topography and shape).

This recalculation is as follows.

building	\$120,499 x .82 (-15 unfinished, - 3 functional)	= \$98,800
1 acre	\$15,000 x 1.20 x .85 (-10 landscaping; -5 ledge)	= \$15,300
4 acres	\$4,000 x 1.0 x .8 (-10 wetlands and ledge; -10 topo/shape)	= <u>\$ 3,200</u>
		\$18,500

building	\$ 98,800
land	<u>\$ 18,500</u>
	\$117,300

Concerning the functional depreciation for the basement, the board finds the lack of a basement has an adverse impact on the functional utility of the house and garage. As the Taxpayers stated, a portion of the garage is now

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occupied by the utility room for the heating and electrical systems. Furthermore, the lack of a basement creates the need to use other areas of the house and garage for storage. The board concludes the lack of a basement would impact the functional utility of the Property, and the board made a nominal 3% adjustment for the lack of a basement. The adjustment may have been more substantial, but the burden is on the Taxpayers to show the extent of any adjustments. Lacking any value evidence on this point, the board made a conservative 3% adjustment.

Concerning the adjustments to the land, the board found that it was appropriate to make an adjustment to the land for lack of landscaping as shown by the photographs, especially compared to the comparables. Additionally, while the Town has a valid point that once a property has been developed, the existence of ledge usually does not affect the land value, this was not so in this case. The Taxpayers presented sufficient evidence to show that the

ledge, and overall topography and soil type, makes it very difficult to maintain the driveway in the spring. The Taxpayers testified about the steps they have taken to remedy the spring driveway problems, which require yearly work. Despite the Taxpayers' efforts, the driveway problem continues, warranting an adjustment. Finally, the board adjusted the secondary acreage for wetlands and ledge.

The board does not accept the Taxpayers' asserted value because the Taxpayers did not present any market information concerning the Property's value. To the extent the Taxpayers relied upon comparable assessments, the Town adequately demonstrated why those assessments, when adjusted, supported the Property's assessment (with the adjustments made by the board above). Additionally, the Town adequately explained that it adjusted the land assessment for the right-of-ways by reducing the condition factor by 10% (offsetting the view factor).

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If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$117,300 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

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 Steven and Penny Binette, Taxpayers; and Chairman,

Selectmen of Milan.

Date: July 13, 1998

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Valerie B. Lanigan, Clerk