

Boston and Maine Corporation

v.

Town of Canterbury

Docket No.: 17075-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessments on the following vacant lots (the Properties).

Lot No.	Assessment	Acreage
21-018	\$ 21,300	1.20
21-019	\$ 28,000	1.0
5-024	\$ 235,800	25.50
4-018	\$ 48,300	38.90
4-021	\$ 33,300	17.60
4-038-2	\$ 41,600	30.40

The Taxpayer also owned, but did not appeal, another vacant lot in the Town with an \$800 assessment. For the reasons stated below, the appeal for abatements is granted.

The Taxpayer has the burden of showing the assessments were 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 Properties' assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer carried this burden.

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The Taxpayer argued in general that the six appealed parcels were either landlocked or had minimal access resulting in a significantly lower value than that assessed by the Town. An appraisal report performed by Robert G. Bramley estimated the market value of the Properties at:

Map/Lot No.	Value
21-018	\$600
21-019	\$500
5-024	\$21,000
4-018	\$21,000
4-021	\$10,000
4-038-2	\$22,000

The Town argued the assessments were proper because:

- (1) in most cases the parcels were assumed to have the potential for at least one building site if accessible by a class VI road;
- (2) the Town was revalued in 1996 and based on a sales analysis, the same standards were applied to the appealed parcels as were applied throughout the Town; and
- (3) several of the parcels (Map 5, Lot 24 and Map 4, Lot 21) are uniquely located, having either a view of the Merrimack River or being adjacent to the

Canterbury industrial area.

Subsequent to the hearing, the board on its own, viewed, to the extent feasible, the six parcels under appeal. Map 21, Lots 18 and 19, were located and viewed across the railroad tracks. The board was able to locate the general location of Map 5, Lot 24 along the Merrimack River and viewed this parcel from both the class VI road adjoining it and by walking some of its interior. The other three parcels of land (Map 4, Lots 18, 21 and 38-2) were not able to be viewed directly because of the lack of access to them without significant walking across other property owners' land or along the State of

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New Hampshire's rail line. However, the board did view, from a distance, the general topography of Lots 18 and 21 from Intervale Road.

Board's Rulings

In general, the board finds the Taxpayer's appraised value by Mr. Bramley to be significantly more accurate than the Town's assessed value. The board agrees with the Taxpayer that in most cases the parcels have limited current utility due to their remoteness, lack of access and general location within the Town. The board finds the assumption of the Town's assessing consultant, Ms. MacKinnon, that several of the lots have the potential for building sites to be highly speculative and not warranted based on our view of the Properties.

In particular, the board finds as follows for each parcel.

Map 21, Lots 18 and 19

On the view the board noted that the maintained section of Boyce Road ended at the State of New Hampshire rail line. While there may have been

access to these lots across the rail line sometime in the past (old right-of-way and tract maps contained in the Bramley appraisal indicated a crossing to these parcels) none currently exists. In addition to the lack of access, the parcels' shallow depth (99 feet) and being sandwiched between the State of New Hampshire rail line and Interstate 93 limit the marketability of the lots. The board finds both lots should be assessed as rear land with a .50 condition factor for the lack of access. This results in assessments of \$900 for Lot 18 and \$800 for Lot 19. These values are generally supported by Mr. Bramley's values and his highest and best use assumption of supplemental rear land.

Map 5, Lot 24

This parcel is accessed by a class VI highway at a significant distance from where the maintained section of Boyce Road ends. The land is generally rolling with one large depression and a very steep bank to the Merrimack River. This bank, however, does afford excellent views of the Merrimack River and the flood plain in Boscawen. The board disagrees with the Town's

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contention that the frontage on the Merrimack River significantly increases the value of this property. While the views are exceptional, any utility of the property is significantly diminished by its class VI access, the length of this access, the lack of power to the site and the general location of the lot. While Canterbury's zoning ordinance provides a process for obtaining building permits and/or subdivision on a class VI road, the Town requires upgrading or posting a bond to upgrade the road to class V standards. (See Canterbury Zoning Ordinance, pg. 20, Class VI Roads - Municipality Exhibit E).

The board, based on its view, finds this cost would be prohibitive for current development of this parcel. The board also finds the parcel would

have minimal seasonal recreational desirability because, while the views are significant, the river is inaccessible due to the very steep bank (the board estimated the vertical drop from the lot to the river to be approximately 100 to 200 feet).

It is certainly difficult to arrive at a definitive estimate of market value for this parcel. On one hand, the board finds the Town's assessment to be very excessive and based on the improper, highly speculative assumption that it contains one or more exceptional building sites. On the other hand, the board finds Mr. Bramley's estimate does not adequately capture the unique setting of the parcel and its class VI road access. Without evidence of any feasible, more intensive use of this parcel, the board concludes its highest and best use to be a combination of open space/timber/recreational uses. The board concludes that the parcel should be assessed as all rear land at \$1,500 per acre with the Town's size adjustment of .92 to arrive at an assessed value of \$35,200. The resulting assessed value at just under \$1,400 per acre appears reasonable for these uses and the property's attractive views of the Merrimack River flood plain.

Map 4, Lot 18

The Town did not assess a site value on this lot. The board finds this is proper because based on the testimony, the map and the board's limited

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ability to view the general location of this property, we conclude it is rear supplemental land. The board finds all 38.9 acres should be assessed as rear land with the Town's size adjustment of .89 and a condition factor of .5 to recognize the lack of access to this parcel. This results in an assessed

value of \$20,800 which is generally supported by Mr. Bramley's estimate of \$21,000.

Map 4, Lot 21

Similarly, the board finds that this parcel should not be assessed for a building site as was done by the Town. While the property does abut land owned by the Town for industrial uses, the testimony was that the parcel is so distant from the area currently being developed and promoted by the Town that the cost of extending the road to this parcel is impractical. While the parcel may have some use in the future due to its proximity to the Canterbury industrial area and Interstate 93, currently the location is so remote and such use so distant in the future, it is speculative. The board finds that all 17.6 acres should be assessed as rear land and receive a condition factor of .5 to account for the lack of access to the parcel. This results in an assessed value of \$12,400 and is generally supported by Mr. Bramley's appraisal estimate of \$10,000.

Map 4, Lot 38-2

The board finds this parcel should receive a further adjustment than that recognized by the Town for lack of access and the existence of powerlines crossing the eastern portion of the parcel. Reducing the condition factor to .45 results in an assessed value of \$23,400 which is generally supported by Mr. Bramley's estimate of \$22,000.

In summary, the board finds the assessments to be:

Map 21, Lot 18	\$ 900
Map 21, Lot 19	800
Map 5, Lot 24	35,200
Map 4, Lot 18	20,800
Map 4, Lot 21	12,400
Map 4, Lot 38-2	<u>23,400</u>
Total	\$93,500

Again, in conclusion, the board finds many of the Town's assumptions in assessing the parcels to be speculative or without any basis. Having viewed the lots and determined each parcel's highest and best use, the board is convinced the values found above are reasonable based on each parcels' accessibility and utility.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of the values found above 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

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 John R. Nadolny, Agent for Boston and Maine Corporation, Taxpayer; and Chairman, Selectmen of Canterbury; and Alice MacKinnon, Agent for the Town of Canterbury.

Date: July 27, 1998

Valerie B. Lanigan, Clerk

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