

**Mark N. Plantier**

**v.**

**Town of Bedford**

**Docket No.: 17088-96PT**

**DECISION**

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 adjusted assessment of \$231,400 on 3.39-acre lot with a single-family home (the Property). The Taxpayer also owns, but did not appeal, another property in the Town with a \$228,900 assessment. For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property was purchased in 1996 for \$200,450 (pursuant to a

construction contract);

- (2) the bank appraised the Property, preconstruction, for \$200,000;
- (3) the assessment exceeded the value compared to comparable sales;
- (4) the landscaping was not completed as of April 1, 1996; and

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(5) the land assessment was excessive compared to the \$62,000 land purchase price and given the deficiencies in the land -- wetlands, topography and powerline easement.

The Town argued the assessment was proper because:

- (1) the Taxpayer bought the Property for less than market value as shown by the Town's comparables;
- (2) the Taxpayer's appraisal was flawed because the house size was wrong, no adjustment was made for the Property's larger lot size, comparables two and three were substantially smaller houses that were not comparable to the Property, the appraisal failed to correctly show that the Property had a deck and a fireplace (The Town asserted comparable one, with corrections, yielded a \$220,600 value.);
- (3) the powerline easement does not impact the value because the Property still has approximately 149 feet of frontage other than the frontage subject to the easement;
- (4) the wetlands do not affect value because there is sufficient dry land, and it is not unusual for lots in Town to have some wetlands;
- (5) the appraisal agreed with the lack of impact of the easement and wetlands;
- (6) the Town's sales analysis supported the assessment, and these sales were

all on the same street as the Property;

(7) the assessment was actually low, considering the sales and the assessments on other properties on the street;

(8) the Town had already adjusted the land assessments in the neighborhood after talking with the Taxpayer and after looking at the sales on the street;

(9) the assessment card listed the Property as only 85% complete as of April 1, 1996, when the Taxpayer testified the Property was complete as of April 1, 1996, except for a punch list and the landscaping; and

(10) even though the landscaping was not completed by April 1, 1996, the assessment was still fair given the Town's calculated market value of

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\$222,200, which multiplied by the 1.12 equalization ratio would yield a \$248,900 assessment.

#### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer did not show the assessment was excessive for the following reasons.

1) The Property's equalized assessment was \$214,400 (\$240,000 assessment ÷ 1.12 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Property was worth less than the \$214,400 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment. The Taxpayer did not make such a showing while the Town demonstrated that on April 1, 1996, the Property was worth at least \$214,400.

2) The Taxpayer testified the Property's purchase price was \$200,450 in

May 1996. While this is some evidence of the Property's market value, it is not necessarily conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). Based on the other evidence, discussed next, it was clear that the Taxpayer's purchase price was below market value.

3) Concerning the Taxpayer's appraisal, the board finds the appraisal was based on the incorrect square footage, listing 2,176 square feet when the Property's actual square footage was 2,704 square feet. As pointed out by the Town, correcting the Property's square footage and making the adjustments to the comparables, along with some other adjustments recommended by the Town, demonstrated that the appraisal was flawed and should have reached a value conclusion of approximately \$220,000.

4) In terms of market value, the Town presented the best evidence, namely, three sales on the Property's street, and these properties were strikingly similar to the Property in terms of type, size and quality. As

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shown on the Town's appraisal grid, the Town's comparables only required one, two and three adjustments, and these adjustments were small in magnitude.

5) The Taxpayer also asserted the land assessment was excessive given deficiencies in the land and given the \$62,000 purchase price that he negotiated with the seller. Moreover, the Taxpayer asserted the landscaping had not been completed as of April 1, 1996, and he had an estimate of \$3,500 to complete the landscaping. Given the substantial amount of market information and the board's conclusion that the Property was worth at least the equalized assessment, there is no reason to adjust the assessment for

these two asserted reasons. The board values the Property as a whole even though the assessing practice breaks out the land assessment and the building assessment. Additionally, the Town explained why the asserted land deficiencies did not affect the Property's value. Concerning the landscaping, we also note that the Taxpayer testified that the Property was basically finished on April 1, 1996, but the Town had erroneously adjusted the Property as if it were only 85% complete. This adjustment, obviously, worked in the Taxpayer's favor.

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

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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

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Ignatius MacLellan, Esq., Member

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Douglas S. Ricard, Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Mark N. Plantier, Taxpayer; and Chairman, Selectmen of Bedford.

Date: June 11, 1998

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Valerie B. Lanigan, Clerk

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