

Gerry Handley

v.

Town of Hooksett

Docket No.: 17428-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessments of: Map 19/Lot 14 owned by Gerard A. Handley - \$22,200 (land only) on a 15-acre lot; Map 21/Lot 43 owned by Gerry A. Handley Agency, Inc . - \$43,500 (land only) on a 36,590 square-foot lot; and

Map 36/Lot 0001-0004 owned by Gerard A. and Carmel V. Handley - \$75,400 (land only) on a 3.39-acre lot; (the "Properties"). The Taxpayers also own, but did not appeal, several other properties in the Town. In accordance with Appeal of Sunapee, 126 NH 214 (1985), the board addressed the issue with the parties of the balance of the Taxpayers' property being reasonably assessed and the parties agreed they were. For the reasons stated below, the appeals for abatement are granted.

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

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The Taxpayers argued the assessments were excessive because:

- (1) Map 21 Lot 43 - the Town recently reduced the assessment to \$10,000 which is acceptable to the Taxpayer for the 1997 tax year;
- (2) Map 19 Lot 14 is a triangular piece of land with only 50 feet of frontage; 200 feet of frontage is required to develop; the soils are muck and peat through two-thirds of the lot; the market value as of April 1997 was \$5,000; and
- (3) Map 36 Lot 0001-0004 was sold for \$75,000 in 1988 and the property across the street from this lot also was sold for \$75,000; the subject lot was foreclosed on in November 1991 and was put on the market for \$45,000 plus taxes; the lot across the street was on the market for three years and sold in May 1998 for \$55,000; and the market value as of April 1997 was \$45,000 to \$50,000.

The Town argued the assessments were proper because:

- (1) Map 19 Lot 14 has 15 acres of land, access on a road and can get at least one building on the lot; the Town feels the lot is worth at least \$22,000; however, the existence of muck and peat and poorly drained soils limits its use; and
- (2) Map 36 Lot 0001-0004 sold for \$75,000 at the time of the reassessment; the subsequent sales and marketing data the market value is between \$45,000 to \$50,000 with \$45,000 being on the low end of value.

Board's Rulings

Based on the evidence, the board finds the proper assessments to be as follows:

Map 21 Lot 43 - \$10,000

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Map 19 Lot 14 - \$15,000

Map 36 Lot 0001-0004 - \$59,000

Map 21 Lot 43

Based on the physical description of this lot by both parties, the board concurs with the Town's recommended adjustment.

Map 19 Lot 14

The board has increased the size/quality adjustment on the assessment-record card from .37 to .25 to account for the wetland type soils predominant on the lot, the very limited access off the cul-de-sac on Casey Drive and the apparent limited or non-existent current abutter value. Both parties agreed that while there may be a potential building site somewhere to the rear of the parcel, it is not feasible to develop such a site because of the extensive wetlands and distance that a drive would have to be placed across those wetlands. Further, there is a question of obtaining a building permit because the parcel currently has at best 50 feet of frontage whereas zoning lot dimensions require 200 feet of frontage in this area. Clearly, based on the evidence, it is difficult for anyone to value this lot with any certainty given its limited and at best speculative future uses. However, based on the board's judgment and experience, we conclude that \$1,000 an acre is a reasonable balance between the lot's inherent limitations and some long-term possible use by an abutter parcel.

Map 36 Lot 0001-0004

Based on the sale of the property across Woodstone Terrace and the recent Taxpayers' listing prices for the lot, the board concludes the lot's market value in 1997 was approximately \$50,000. Applying the Town of Hooksett's 1997 equalization ratio of 1.18 results in proper

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assessment of \$59,000.

If the taxes have been paid, the amount paid on the value on in excess of \$10,000 on Map 21 Lot 43; \$15,000 on Map 19 Lot 14; \$59,000 on Map 36 Lot 0001-0004 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 1998. 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.

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Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Gerard A. Handley, Taxpayer and representative for Gerry A. Handley Agency, Inc. and Gerard A. and Carmel v. Handley, Taxpayers; and Chairman, Board of Assessors of Hooksett.

Date: November 8, 1999

Lynn M. Wheeler, Clerk

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