

Robin and Edward J. Comiskey III

v.

Town of Bedford

Docket No.: 17506-97PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$210,700 (land \$54,200; buildings \$156,500) on a two-story Colonial style home on a 14,375 square foot lot in Bedford Three Corners, a cluster housing development (the "Property"). For the reasons stated below, the appeal for abatement is denied.

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 failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the Taxpayers live in a cluster housing development and the Town has

assessed a value for the common land which is not owned by the Taxpayers;

(2) the common land is owned and administered by the Bedford Three Corners Association (Association) which is a separate legal entity;

(3) the total value placed on the common land is excessive (\$690,000 for 78 units), large portions are subject to a conservation easement or covered by

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water, and three comparables of similar land supports the common land's overassessment;

(4) the Property was purchased in September 1995 for \$183,900;

(5) at the time of purchase of the Property in September 1995, the Association did not exist and the Taxpayers had future rights in the Association (articles of incorporation recorded November 12, 1996); and

(6) the assessment should be reduced by the \$8,900 common land value.

The Town argued the assessment was proper because:

(1) the Association members are the owners each with an undivided interest (as tenants in common);

(2) each individual lot has a square footage assigned to it; therefore, the Town chose to assess the common area as a separate line item;

(3) a July 1995 appraisal provided by the Taxpayers when equalized by the 1995 ratio (115%) supports the assessment;

(4) comparable sales support a market increase of 4% per year;

(5) the Association would not be able to sell the common land as it is used to satisfy density requirements;

(6) the Taxpayers could not sell their Property without deeding their one seventy-eighth interest in the common land;

(7) the Town's assessment methodology is the same as other cluster subdivisions in Town; and

(8) the Taxpayers have presented no market evidence of the Property's value as of April 1997.

**Board's Rulings**

Based on the evidence, the board finds the Taxpayers failed to carry their burden of proof. The Taxpayers' testimony focused solely on the \$8,900 portion of the land assessment identified on the assessment-record card as common land.

Assessments must be based on market value. See RSA 75:1. Due to market fluctuations assessments may not always be at market value. The assessment on

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a specific property must be proportional to the general level of assessment in the community. In this municipality, the 1997 level of assessment was 110% as determined by the department of revenue administration's equalization ratio. This means assessments generally were higher than market value. The Property's equalized assessment was \$191,545 ( $\$210,700 \div 1.10$  equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment the Taxpayers would have to show the Property was worth less than the \$191,545 equalized value. Such a showing would indicate the Property was assessed higher than the general level of assessment.

In making a decision on value, the board must look at the Property's value as a whole (including all its components) because this is how the market views value. Moreover, the supreme court has held the board must consider a

taxpayer's entire estate to consider if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayers presented no evidence on the total market value of their Property. The board finds the Taxpayers' assessment, which includes a component for their interest in the common land, values all the Taxpayers' interest in their Property. When the Taxpayers purchased their individual Property at 12 Three Corners Road, part of the bundle of rights they acquired was a future interest in the Bedford Three Corners common area. See Municipality Exhibit A at (exhibit B, D and exhibit C covenants). While the Property is held by the Association, the Association is comprised of the owners of the 78 lots in Bedford Three Corners. Further, the covenants describe that the members of the Association own the common property as tenants in common. Therefore, the value of the common area, which is primarily to meet the density requirements for cluster development, is inherently contained in the value of the 78 individual lots. To subtract the common area value would ignore the fact that it is part of the total bundle of rights being purchased with the individual lots. The

Taxpayers argued the sum value of the interests in the common land, if

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assessed at all, should be comparable to assessments of other conservation land. However, as already stated, the value of the common area far exceeds its intrinsic value as open space value. Such land was necessary to meet the initial density requirements to create the cluster development and, in some cases, locate common septic facilities, and that value and those rights are held by the individual lot owners and are transferred at the time of the sale of the individual lots. Consequently, an analysis of the properties that have sold is needed to determine whether the Taxpayers' total assessment is

disproportionate or not regardless of how the Town has broken out the different components of the assessment<sup>1</sup>.

The Town submitted three sales of properties in the same subdivision containing the same common area assessment. A summary of the sales and their assessment-to-sales ratios is below.

Location	Sale Date	Assessed Value	Sale Price	Assessment-to-Sales Ratio
6 Three Corners Rd	6/23/97	\$171,300	\$158,000	1.08
9 Three Corners Rd	6/2/98	\$199,600	\$185,000	1.08
257 Pulpit Rd	6/30/98	\$193,900	\$191,000	1.02

All three sales are assessed slightly below the town-wide level of assessment of 110%. These three assessments also included the \$8,900 common area component. If the common area component was removed, as argued by the

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Taxpayers, these properties would be further underassessed. This highlights the necessity of reviewing assessments as a whole as opposed to arguing any component in isolation of the balance of the bundle of rights owned by the

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<sup>1</sup> Property valuation by the three approaches to value, cost, sales and income, is intended to reflect the value of all rights and interests embodied in physical real estate. RSA 21:21. Most improved real estate is generally comprised of two major components, land and improvements. Municipalities in the process of arriving at assessments generally break down their assessments by those two broad categories. However, as stated earlier, even if one component is overstated, if the total reflects market value (in other words some other component is understated) then the total value is appropriate. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985), quoting Amoskeag Manufacturing Company v. Manchester, 70 N.H. 200, 205 (1899).

individuals.

In summary, the board finds the Taxpayers did not prove their total assessment of \$210,700 was disproportionate.

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

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Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Robin and Ernest J. Comiskey III, Taxpayers; and Chairman, Board of Selectmen of Bedford.

Date: March 26, 1999

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Valerie B. Lanigan, Clerk

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