

Douglas Mould

v.

Town of Newbury

Docket No.: 17623-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessments of the following "Properties":

Map 16-305-545: \$1,450, a .09-acre lot;

Map 16-308-545: \$30,900, a .39-acre lot;

Map 16-281-549: \$21,750, a .70-acre lot; and

Map 15-320-002: \$36,000 (land \$26,600; buildings \$9,400), a cottage on a .13-acre lot.

For the reasons stated below, the appeal for abatement 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.

The Taxpayer argued the assessments were excessive because:

(1) an independent appraisal of three of the four lots showed the assessments were higher than and

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not in line with market value;

- (2) combining the four lots would not change the total overall value;
- (3) the Properties do not have any deeded access to Lake Sunapee; and
- (4) the Properties do not have any views of the lake.

The Town argued the assessments were proper because:

- (1) some of the sales used by the Taxpayer's appraiser were not comparable or arm's-length transactions, making the value conclusions invalid;
- (2) sales in the area show that most properties are selling for slightly less than their assessments;
- (3) the highest and best use of the Properties would be to combine them into one lot; and
- (4) the market value of the four lots merged into a single tract would be approximately \$60,000.

Subsequent to the hearing, the board took a view of the Property and the comparables. The board's review appraiser, Mr. Bartlett, accompanied the board, took photographs of the Property and filed a brief report which was mailed to the parties on September 23, 1999. Both parties were given an opportunity to respond to Mr. Bartlett's report prior to this decision being reached.

Board's Rulings

Based on the evidence, the board finds the total assessments of all four lots to be \$70,450. In deciding this case, the board is mindful of RSA 674:39-a which states:

Voluntary Merger. Any owner of 2 or more contiguous preexisting approved or subdivided lots or parcels who wishes to merge them for municipal regulation and taxation purposes may do so by applying to the planning board or its designee. Except where such merger would create a violation of then-current ordinances or regulations, all such requests shall be approved, and no public hearing or notice shall be required. No new survey plat need be recorded, but a notice of the merger, sufficient to identify the relevant parcels and endorsed in writing by the planning board or its designee, shall be filed for recording in the registry of deeds, and a copy mailed to the municipality's assessing officials. No such merged parcel shall thereafter be separately transferred without subdivision approval.

While they are legally separate tracts, the board concurs with the Town and Mr. Bartlett¹ that the highest and best use of the four contiguous lots is to view them as one building lot based on the size and configuration of the lots. Therefore, in determining their proper assessed values, the board has viewed them as one economic unit because that is how the market would view them. However, in order for the lots to be merged, there must be an application for merger filed by the Taxpayer. In this case, the Taxpayer has made no application for merger of the lots and has stated he wishes them to remain separate lots of record. The board finds it is appropriate to adjust the assessed values on the lots based on their highest and best use, but as separate lots, and has utilized the Town's methodology and its own judgment² in doing so. The board has applied a .90 excess frontage adjustment to lots 320/002 and 308/545 and increased the market (paper street) adjustment on lot 281/549 from .50 to .40 as follows:

Map 320/002

\$29,700 X .80 (topography)	
X .90 (excess frontage)	
X .80 (undeveloped)	= \$17,100
Building ³	= 9,400

Map 308/545

\$43,524 X .80 (topography)

¹ Mr. Bartlett considered the existing building to have no contributory value. The board does not concur with Mr. Bartlett on this point and has utilized the Town's assessed building value in its calculations.

² The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:33 VI; Appeal of Nashua, 138 N.H. 261, 264-65 (1994); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

³ The board has calculated a value of the lot as if undeveloped; however, for assessing purposes, the value of the structure should be added to the assessed value.

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X .90 (excess frontage)
X .80 (undeveloped) = \$25,100

Map 305/545 = \$ 1,450

Map 281/549

\$104,400 X .70 (topography)
X .85 (excess frontage)
X .70 (undeveloped)
X .40 (market adjustment) = \$17,400

The Taxpayer submitted three appraisals for the board to review. The board gave little weight to the appraisals because some of the sales were not comparable to the subject lots (landlocked) and some were not arm's-length transactions (fiduciary sales). Additionally, the appraisals were not supported by the area comparables submitted by the Town. Further, the appraised value of Map 320/002 (the cottage lot) in the amount of \$15,000 was not supported by the appraiser's cost approach of that lot where the appraiser indicated a site value with site improvements of \$16,500 (excluding the \$14,850 value of the cottage), \$1,500 higher than his estimate of both the land and building by the sales comparison approach.

Further, in his response to Mr. Bartlett's report, the Taxpayer agreed to a \$63,500 valuation (over twice the \$30,000 total value found by his appraiser), which he considered to be in line with market conditions.

If the taxes have been paid, the amount paid on the value in excess of \$70,450 for all four lots 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 and 1999. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent

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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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

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Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Douglas Mould, Taxpayer; and Chairman, Board of Selectmen of Newbury.

Date: December 22, 1999

Lynn M. Wheeler, Clerk

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