

Joan V.H. Harris

v.

Town of Sutton

Docket No.: 17765-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$37,250 (land only) on an 8.54-acre lot (the "Property"). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(g);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 carried this burden.

The Taxpayer argued the assessment was excessive because:

- 1) there are eleven parcels for sale in the Rowell Hill Subdivision; except for two of the properties, they are all listed for sale at lower values than they are assessed;
- 2) the Property has been listed on the market for eight years and no offers have been received;

- 3) the Property cannot be subdivided, the lot has an old-fill-and-stump dump on it, the dirt road ends at the lot which the Town uses as a turnaround for plowing, and the lot is close to Interstate 89 all of which deter from its value;
- 4) the Town's comparables #2 and #3 support the Taxpayer's position that the Property is over-assessed;
- 5) the Town's comparable #1 is a cleared lot with a view (the Property has no view) and its listing of the 7.9-acre property across the street from the Taxpayer is not comparable because that lot is subdividable with zoning approval;
- 6) a broker recommended listing the Property between \$33,000 to \$37,000 in 1995; and
- 7) the April 1998 market value was \$29,000.

The Town argued the assessment was proper because:

- 1) the market for land sales fluctuates in the Town; and
- 2) the lot across the street has been on the market for \$59,000.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$35,000 which indicates an April 1998 market value of \$32,700 ($\$35,000 \div 1998$ 107% equalization ratio). The board finds a 10% market adjustment is appropriate primarily because of the Property's proximity to Interstate 89.

The Property has been listed for sale for eight years. There is no evidence to suggest it has not been properly marketed. Nevertheless, an asking price of \$33,500 in 1998, reduced to \$31,900 in 1999, has resulted in no offers. The lot is located very close to Interstate 89, sits at the end of the road which the Town uses as a snow plow turnaround, has a stump dump on it

which made septic system designing difficult, and subdivision potential is questionable at best.

The Town testified that land market values have fluctuated and the 1998 coefficient of dispersion for land sales was 30%. The Town agreed the Property is not the best lot in Rowell Hill (most of the good lots have been developed) and its proximity to Interstate 89 may require an adjustment.

There is no view from this lot. The board agrees with the Taxpayer that the listing of the property across the street is not a good comparable because that property, although of similar size, is subdividable and has zoning approval. Further, a listing is merely an asking price and the evidence that the Property has been listed for sale for eight years without an offer, along with the ten other properties in the subdivision currently listed for sale, suggests this lot may continue to be on the market for an extended period of time. The board finds the Town's comparables #2 and #3 support the board's indicated market value (\$32,700) of the Property.

The board has made the following adjustment to the land value in arriving at its revised assessment:

	Basic Value	Topo. Adj.	Excess Adj.	Undev. Adj.	Market Value	Value
Home site	\$40,000	.80	100	.70	.90	\$20,150
Rear acres	\$22,860				.65	\$14,850
TOTAL ASSESSED LAND VALUE (rounded)						\$35,000

If the taxes have been paid, the amount paid on the value in excess of \$35,000 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 1999. 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.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Joan V.H. Harris, Taxpayer; and Chairman, Board of Selectmen of Sutton.

Date: June 19, 2000

Lynn M. Wheeler, Clerk