

Hersey Road Development Group

v.

Town of Sandown

Docket No.: 17778-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of Map 7/Lot 19-8: a 7-acre lot, land only - \$36,400; Map 7/Lot 17-21: a 7.5-acre lot, land only - \$33,500; and Map 7/Lot 17-26: a 5-acre lot, land only - \$24,900 (the "Properties"). The Taxpayer owned three additional lots which were not appealed. Both parties at the hearing agreed the assessments for the non-appealed lots were reasonable. For the reasons stated below, the appeal for abatement is granted.

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. We find the Taxpayer carried its burden.

The Taxpayer argued the assessment was excessive because:

(1) the Town's growth management phasing policy imposed a non-buildable restriction on the

subject lots in calendar year 1998;

(2) the assessed value for a non-buildable lot in calendar year 1998 should be substantially less than if the property was a buildable lot for that year;

(3) the non-buildable restriction has resulted in the Taxpayer incurring additional financing costs of approximately \$116,000 for all lots that were impacted by the restriction;

(4) the subject lots should be classified and assessed as "raw" land; and

(5) the proper valuation based on a per acre pro-forma for each lot is as follows: #Lot 21 \$14,357; Lot 26 \$9,590; Lot 8 \$13,514.

The Town argued the assessment was proper because:

(1) The restrictions on the subject lots have been properly factored into the assessments for 1998; and

(2) The assessed values properly reflect the market values of the lots on April 1, 1998.

Board's Rulings

Based on the evidence, the board finds the proper assessments for 1998 to be: Lot 8, \$29,500; Lot 21, \$31,750; and Lot 26, \$29,500.

To place the board's findings in proper context, the following two principles relative to determining proportional assessments must be kept in mind. First, in determining whether an abatement is warranted, the Taxpayer's entire estate must be considered. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Consequently, while the board's analysis will relate to each one of the three appealed lots, its conclusion that an overall abatement is warranted is based on the three lots' collective market value.

Second, assessments must be based on market value. See RSA 75:1. Due to market fluctuations, assessments may not always be at market value. (A property's assessment, therefore, is not unfair simply because it exceeds the property's market value.) The assessment on a specific property, however, must be proportional to the general level of assessment in the municipality. In this municipality, the 1998 level of assessment was 112% as determined by the department of revenue administration's equalization ratio. This means assessments generally were higher than market value. The Properties' collective equalized assessment is \$84,643 (\$94,800 assessment divided by the 1.12 equalization ratio). This equalized assessment should provide an approximation of market value. To prove overassessment, the Taxpayer would have to show the Properties were worth less than the \$84,643 equalized value. Such a showing would indicate the Properties were assessed higher than the general level of assessment.

The board was unable to place any significant weight on the Town's assessed value when equalized as an indication of market value. Based on the Town's answers to board questions, it is clear that the three appealed lots would be assessed far in excess of their equalized market value, after road completion and after the Town's building restrictions expired in January 1, 1999. Consequently, the reliability of both the base unit price and the Town's adjustments are questionable.

As a result, the board starts with the testimony and evidence submitted relative to the Properties' market value when complete and available for marketing as the basis for determining the proper assessed values as of April 1, 1998. The three appealed lots are part of an 11-lot subdivision the Taxpayer received approval for in January, 1998. Based on the Taxpayer's

marketing experience with the 11 lots, the Taxpayer asserted, and the Town agreed, that reasonable market-value estimates for the three lots with the roads complete and no building restrictions would be: Lot 21: \$35,000; Lot 26: \$45,000; and Lot 8: \$45,000. The Taxpayer testified that the topography of Lot 21 was inferior to the other two lots because it contained significant blasted ledge removed from the road construction and is generally below-road grade. This estimate is also supported by the Taxpayer's testimony of the subsequent marketing efforts of this lot.

Based on the restrictions of the Town's growth-management ordinance, the earliest these three lots could be marketed was January 1, 1999. Further, as of April 1, 1998, Lots 8 and 26 were not accessed by a passable road. As of that date, road construction had just begun with the clearing of stumps and blasting ledge for the road corridor to which the base material and paving had not yet been added. Also, as of April 1, 1998, Lot 21 was not accessed by a completed, town-approved road. However, that road was substantially more complete than the road accessing Lots 8 and 26, having the base asphalt coat in place, but still lacking finish work to the shoulders, ditches and the wearing asphalt layer.

The board finds a 10% reduction to the retail price for all three lots is appropriate for the growth-management ordinance restrictions as of April 1, 1998. The board finds the 10% adjustment is reasonable to account for the interest and nominal risk to carry the lots for an additional nine months until available for marketing after January 1, 1999. The Taxpayer argued that because of the growth-management ordinance restrictions, the lots should have been assessed as rear, undeveloped land, as they were prior to subdivision approval. We disagree.

The property rights and value associated with these lots have increased gradually in proportion to the granting of land-use permits and the investment of development costs such as road construction. Any developer holding these lots as of April 1, 1998, having invested significant permitting and road construction costs, would expect to obtain more from them at that stage, even though not immediately marketable, than simply rear, undeveloped land as the Taxpayer asserts. Appeal of Sawmill Brook Development Co., 129 N.H. 410 (1987); Appeal of Town of Hollis, 126 N.H. 230 (1985); Appeal of Town of Peterborough, 120 N.H. 325 (1980) (the development method, where development costs, including road construction and holding and marketing costs, are backed out of the final retail lot value, is an accepted method in estimating the value of individual lots part way through the development process).

For Lot 21, the board estimates that the remaining costs and Town acceptance of the road constitutes another 10% adjustment as of April 1, 1998, based on the board's experience and the testimony on the stage of completion of the road.

For Lots 8 and 26, the board has estimated a road adjustment of 35% or \$15,750 market value for the incomplete stage of the road ($\$45,000 \times .35$). This estimate is supported in three ways. First, the Town's unfinished-road adjustment to the assessment, which the Taxpayer agreed was reasonable, equaled approximately \$18,700 in assessed-value. Equalizing the \$18,700 with the Town's 1998 equalization ratio of 1.12 results in a similar market value adjustment of \$16,696 ($\$18,700 \div 1.12$). Second, the Taxpayer testified that the total road-construction costs were approximately \$150,000 for ten lots accessed by the two roads or approximately \$15,000 per lot. Third, the board finds this adjustment of 35% is in a range of

road-construction costs commonly seen for lots of this market-value range.

The summary of the lots' market value, adjustments and indicated assessed values are as follows.

Lot 8

Market Value		\$45,000
Incomplete Road Adjustment (as of April 1, 1998, -35%)	x	.65
Growth-management Ordinance Restriction (-10%)	x	<u>.9</u>
Indicated Market Value		\$26,325
1998 Equalization Ratio	x	<u>1.12</u>
Indicated Assessed Value		\$29,500

Lot 21

Market Value		\$35,000
Incomplete Road Adjustment (as of April 1, 1998,-10%)	x	.9
Growth-Management Ordinance Restriction (-10%)	x	<u>.9</u>
Indicated Market Value		\$28,350
1998 Equalization Ratio	x	<u>1.12</u>
Indicated Assessed Value		\$31,750

Lot 26

Market Value		\$45,000
Incomplete Road Adjustment (as of April 1, 1998, -35%)	x	.65
Growth-Management Ordinance Restriction (-10%)	x	<u>.9</u>
Indicated Market Value		\$26,325
1998 Equalization Ratio	x	<u>1.12</u>
Indicated Assessed Value		\$29,500

The total of the three indicated assessments of \$90,750 is less than the Town's total assessment for the lots of \$94,800. Given the similarity of the Town's total assessments and the board's findings and given that assessing is not an exact science, but simply a supportable estimate of value, the board might, in other circumstances, find the Town's assessments reasonable. However, in this case the board grants an abatement because it is mindful of two

factors. First, the Town's abated value of \$24,900 for Lot 26 inadvertently omitted approximately \$6,400 of assessed value for 3.2 acres of supplemental land to the primary site. If no abatement were ordered, this amount would be added back by the Town in subsequent year assessments. Second, the Town's assessment basis and methodology for these lots would result in them being overassessed in subsequent years when the Town removes the growth-management ordinance and the incomplete road adjustments. Since the board has ordered an abatement, the Town must use the board's ordered assessments in subsequent years with good-faith adjustments in accordance with RSA 76:17-c, I and TAX 203.05.

Lastly, based on the testimony received in this appeal and the magnitude of the overassessment of the appealed lots once road construction and growth-ordinance restrictions are removed relative to their actual market value, the board is concerned there may be similar assessment inequity throughout the Town. The Town's representative, Mr. Warren, indicated the Town was last revalued in 1989 and that last year's town meeting had failed to approve funds towards a new reassessment. Consequently, the board is initiating an investigation to determine whether an order for reassessment pursuant to RSA 71-B:16 III is warranted. An accompanying order initiating such an investigation is enclosed with this decision.

If the taxes have been paid, the amount paid on the value in excess of the above-stated values 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

Paul B. Franklin, Chairman

Steven H. Slovenski, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to David Savard, Representative for Hersey Road Development Group, Taxpayer; and Chairman, Board of Selectmen of Sandown.

Date: February 23, 2000

Lynn M. Wheeler, Clerk

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