

**Bruce and Marie Zapolski**

**v.**

**Town of Lempster**

**Docket No.: 17985-98PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$28,900 (land \$11,200; buildings \$17,700) on a single-family home on a 2.5-acre lot (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden. We find the Taxpayers carried this burden..

The Taxpayers argued the assessment was excessive because:

- (1) the lot is all ledge and 15 test pits had to be dug before an area for septic was found;
- (2) there is no public water or sewer in the subdivision; a well and septic system were installed

in 1999;

(3) private road maintenance costs are \$240 per year;

(4) comparative market analyses were prepared by Century 21 in 1996 and 1998; Century 21 recommended listing the Property for \$7,000 in 1996 and \$5,000 in 1998 indicating the subdivision draws no interest because of the ledge and poor soils; and

(5) comparable sales of lots in the subdivision indicate the Property is overassessed.

The Town argued the assessment was proper because:

(1) there is varying topography in the subdivision and the Property is one of the better lots because it is generally level and is on a paved road with access very near Route 10;

(2) there is no public water or sewer available in the entire Town;

(3) many of the owners of lots in the subdivision were members of Highview Church Farm which has since moved to Canada; therefore, many of the sellers are out of the country and could be considered distressed sales;

(4) other properties in the Town with poor access, not on Town roads, and steep slopes have sold for \$5,000 to \$7,000 and the Property is superior to these properties;

(5) the lots in the subdivision along Manor Road and Nichols Road are generally level and no adjustment is made for topography; and

(6) the Town has applied a 15% topography adjustment to the Property as a good faith offer to settle with the Taxpayers.

### **Board's Rulings**

Based on the evidence, the board finds the board finds the proper assessment to be \$25,600.

Despite the relatively small magnitude of the assessment in this case, it is a difficult property to determine with any certainty as to what its proper assessed value should be. On one hand, the Taxpayers submitted sales of lots which tend to indicate that the market value for similar property is likely being depressed due to the original developer, Highview Church Farm, having closed its facilities and its members having moved out of the area. Both parties' testimony indicates that there is a temporary over-supply of properties on the market in Lempster as a result of the church's move. On the other hand, the Town reasonably argued that this is a temporary market phenomenon and that other lots with poor topography and access in the Highview Church Farm subdivision have sold at the same price as more level and accessible lots. The board realizes this type of market phenomena is difficult for a town to reflect in its assessments especially given the size of a town such as Lempster with relatively few sales per year.

Therefore, without ruling on the appropriateness or the practicality of the Town adjusting assessments for this market phenomena, the board finds the Taxpayers' specific evidence of the ledge conditions of the lot (which likely was not known at the time of the Taxpayers' purchase in 1991), warrants an additional 25% adjustment to the lot, resulting in a lot value of \$7,900. The Taxpayers' evidence and testimony relative to the test pits, volume of fill and overall cost of the septic system subsequently installed in 1999 supports this adjustment.

If the taxes have been paid, the amount paid on the value in excess of \$25,600 shall be

refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Based on the Taxpayers' testimony, the board realizes a septic system was installed before tax year 2000. Because the board's adjustment is based on the ledge constrictions of the lot and because it was largely cured by the addition of fill for the septic, the Town should review the assessment for tax year 2000 and consider removing the additional adjustment found by the board for the ledge condition. The Town should also make further good faith adjustments in subsequent years considering further construction of the house. 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

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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 Bruce and Marie Zapolski, Taxpayers; and Chairman, Board of Selectmen of Lempster.

Date: February 24, 2000

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Lynn M. Wheeler, Clerk

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