

**George L. Koehler**

**v.**

**Town of Plainfield**

**Docket No.: 20121-03PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2003 assessment of \$81,600 on a 5.456-acre vacant lot (Map 2A, Lot 6320, the “Property”). [The Taxpayer owned another lot (Map 2A, Lot 6300), which the parties have agreed was properly assessed and is not part of this appeal.] For the reasons stated below, the appeal for abatement is denied.

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(f); TAX 203.09(a); and Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property has been in the family since 1946 and has wetlands and additional areas with ledge adjacent to a brook, which diminishes its utility and value;

- (2) while the Property may have the potential for two developable lots (because of road frontage), there are seven curb cuts on adjacent land (within approximately 900 feet) which increases congestion and may prevent the Town from giving the Property two curb cuts if a subdivision is applied for in the future;
- (3) the Property is less desirable than other comparables because it does not have a 400 foot depth, which the Town may require for a subdivision;
- (4) there is increasing congestion and safety concerns along Route 12A, which diminish the value of the Property, and land on adjacent roads (like Sugar Hill Road) should be at least as valuable;
- (5) the properties identified in Taxpayer Exhibit 1 (Longacre, Burling, Gobin and Meyette) have lower assessments per developable lot than the Property; and
- (6) when the assessments of these developable lots are compared, the indicated assessment of the Property, with two developable lots, should be in the range of \$44,625 to \$60,000.

The Town argued the assessment was proper because:

- (1) the Property has value as three developable lots because of over 580 feet of frontage along Route 12A and 316 feet of frontage on Roberts Road, which is a Class V Town-maintained, paved road (unlike properties on Sugar Hill Road, which is a dirt road);
- (2) the topography is level and clear along Route 12A and the back wet land would not affect subdivision potential because the Property consists of more than 5.4 acres and the Town's minimum acreage for a developable lot is 0.69 acres;
- (3) the Property has public water and can have commercial development by special exception;
- (4) with respect to curb cuts, a "shared driveway" can serve two lots;

(5) as part of the revaluation, the Town analyzed 67 sales to determine base land values, including 27 unimproved land sales, and its sales analysis supports the assessment details shown on the assessment-record cards; and

(6) the Town's contract assessor met with the Taxpayer to obtain additional information and performed an onsite review, lowering the initial assessment by \$30,000 (from \$111,600 to \$81,600) in the process.

During the hearing, the parties agreed the board could take official notice of the testimony and evidence presented in an appeal of another property in the Town (BTLA Docket No. 20122-03 PT) owned by a related taxpayer, a trust, and heard on the same date. The parties agreed the level of assessment for tax year 2003 was 100%, when the Town completed a revaluation.

### **Board's Rulings**

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

Upon weighing all the evidence, including extensive testimony regarding minimum road frontage, potential curb cuts and the possibility of a shared driveway to access several lots, the board finds the Taxpayer failed to prove the Town was incorrect in valuing the Property as having the potential for three developable lots. Furthermore, three lots would indicate the market value of each lot, based on the \$81,600 assessment and the town's 100% level of assessment, should be at least \$27,200. In Municipality Exhibit A, the Town presented the assessment-record cards for five comparable properties which showed land values well in excess of this amount.

Assessments must be based on market value. RSA 75:1. The Taxpayer presented no appraisal or other market value evidence that would support a lower indication of value. In fact, the Property's location on Route 12A is desirable and gives it considerable development potential, as reflected by the evidence of development on nearby properties. The board recognizes the Taxpayer has no intention of selling the Property and that it has been in his family for quite some time. These facts, however, do not preclude the Town from basing its assessment on market value, the price a willing buyer would be prepared to pay in an arm's-length transaction.

The Taxpayer acknowledged the "car lot" across the highway from the Property was sold in December, 2004 for development as a "Store/Gas Station," but did not provide the sale price. He also indicated this would be a "negative" but did not provide any credible evidence that the sale would decrease, rather than increase, the value of the Property. In the board's experience, development, once begun, often increases rather than decreases the value of remaining undeveloped lots.

There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979); see also Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003):

The plaintiffs produced no evidence regarding the fair market value of their properties. . . .

Justice requires that an order of abatement will not relieve the taxpayer from bearing his or her share of the common burden of taxation despite any error in the process of determining the amount of that share.

The Taxpayer failed to provide any direct evidence of the market value of the Property, but instead relied on comparisons to four other assessments in the Town.

In Taxpayer Exhibit 1, the Taxpayer calculated an average value per developable lot based on comparing the assessments and the development potential he assumed for each of four properties (Longacre, Burling, Gobin and Meyette). Using the assessments on these properties, the Taxpayer computed an average assessment of \$22,312.50 per developable lot, which is not far from the indicated minimum market value per lot noted above (\$27,200) and is below the upper end of the value range per developable lot (\$60,000 for two lots, or \$30,000 each) stated by the Taxpayer in his January 10, 2005 submittal to the board.

The averaging methodology used by the Taxpayer is questionable, to say the least, because the comparable lots are not all of equal desirability for development. The evidence presented (including Taxpayer Exhibits 1 and 2) indicates the Meyette property, in particular, has limited access to Route 12A and quite a bit of undevelopable acreage (because of a brook and wetland) along the frontage. The Gobin lot is irregularly shaped and has relatively little frontage on Route 12A. The Longacre and Burling lots have substantial frontage on Route 12A, but are located a further distance from the village area of the Town.

Even if the board were to accept the Taxpayer's methodology, it is just as likely to lead to a conclusion that other properties may have been underassessed rather than that the Property was overassessed. It is well established that the underassessment of other properties does not prove the overassessment of the Property. See Appeal of Cannata, 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment on other properties would be analogous to a weights and measures inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having

them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper yardstick to determine proportionality, not just comparison to a few other properties. Id.

In summary, the board finds the Taxpayer failed to prove the Property was disproportionately assessed and the appeal is therefore denied.

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(f). 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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Michele E. LeBrun, Member

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Douglas S. Ricard, Member

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Albert F. Shamash, Esq., Member

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: George L. Koehler, 412 Stage Road, Plainfield, New Hampshire 03781, Taxpayer; Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, New Hampshire 03770; and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, representative for the Town.

Date: March 3, 2005

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Anne M. Stelmach, Deputy Clerk

**George L. Koehler**

**v.**

**Town of Plainfield**

**Docket No.: 20121-03PT**

**ORDER**

The board has reviewed the Taxpayer's extensive submission (the "Rehearing Motion"). The Rehearing Motion is denied under the standards set forth in RSA 541:3 and TAX 201.37.

Rehearing motions are only granted in exceptional circumstances when the moving party establishes that "the board overlooked or misapprehended the facts or the law and such error affected the board's [D]ecision." TAX 201.37(d). While the Taxpayer clearly disagrees with the board's findings and conclusions, the board does not find he has met this burden in the Rehearing Motion. Consequently, his procedural remedy, if he is still dissatisfied, is an appeal to the supreme court, not a rehearing of his arguments as to why an abatement should be granted.

TAX 201.37(f) requires a party "to submit all evidence and present all arguments at the hearing. Therefore, rehearing motions shall not be granted to consider evidence previously available . . . or to consider new arguments that could have been presented at the hearing." The board finds no reason why the information in the Rehearing Motion could not have been

presented at the hearing, such as the per acre averaging calculations now stated by the Taxpayer.

The board does not find such information would have affected its Decision.

Any appeal of the Decision is by petition to the supreme court made within 30 days of this Order. See RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Douglas S. Ricard, Member

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I hereby certify a copy of the foregoing Order has this date been mailed, postage prepaid, to: George L. Koehler, 412 Stage Road, Plainfield, New Hampshire 03781, Taxpayer; Chairman, Board of Selectmen, Town of Plainfield, Post Office Box 380, Meriden, New Hampshire 03770; and Edward Tinker, Avitar Associates of New England, Inc., Post Office Box 981, Epsom, New Hampshire 03234, representative for the Town.

Date: April 4, 2005

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Anne M. Stelmach, Clerk