

**Alvin R. Davis, III**

**v.**

**Town of Loudon**

**Docket No.: 23071-06PT**

**DECISION**

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessments on Map 39-11-1 through Map 39-11-15, 15 vacant lots (totaling 17.161 acres) with a combined assessment of \$423,500 as follows:

Map 39-11-1 - \$56,200	- 1.094 acres
Map 39-11-2 - \$26,100	- 1.061 acres
Map 39-11-3 - \$26,100	- 1.062 acres
Map 39-11-4 - \$26,000	- 1.026 acres
Map 39-11-5 - \$26,200	- 1.100 acres
Map 39-11-6 - \$26,700	- 1.466 acres
Map 39-11-7 - \$26,400	- 1.234 acres
Map 39-11-8 - \$26,900	- 1.551 acres
Map 39-11-9 - \$26,500	- 1.283 acres
Map 39-11-10 - \$26,300	- 1.215 acres
Map 39-11-11 - \$26,000	- 1.010 acres
Map 39-11-12 - \$26,000	- 1.026 acres
Map 39-11-13 - \$26,000	- 1.000 acre
Map 39-11-14 - \$26,000	- 1.000 acre
Map 39-11-15 - \$26,100	- 1.033 acres

(the “Property” also known as the “Kinkade Haven” subdivision). The Taxpayer also owns, but is not appealing, Map 20/Lot 100, a 17.410 acre vacant lot with a current use assessment of \$3,473. 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 assessments were 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); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property’s assessments were higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) the Property should be considered as one lot for taxation purposes (in compliance with RSA 674:37-a) due to the Town’s “error” in altering the approval of the Kinkade Haven subdivision;
- (2) the value of the lots as of April 1, 2006 was negligible due to the circumstances created by the Loudon Planning Board;
- (3) a February 15, 2007 appraisal estimated a market value of the Property as a single lot to be \$225,000.

The Town argued the assessments were proper because:

- (1) the Taxpayer purchased the 169 acre parcel for \$500,000 on May 19, 2004; a subdivided lot (#39-11-1-1) consisting of 12.124 acres sold on July 19, 2005 for \$150,000 and a subdivided lot (#39-11-2-1) consisting of 5.536 acres sold on May 2, 2006 for \$93,000;

- (2) the 15 lot subdivision was approved on July 21, 2005, recorded on September 8, 2005 and the Taxpayer's concerns occurred with conditions subsequent to the approval which had to do with the disposition of the open space portion of the subdivision;
- (3) subsequent to the 2006 values being assessed, the Town abated the lots by applying a paper road adjustment of -60% because the road was not in and no bonding had been done; this adjustment was similar to other subdivisions in the Town;
- (4) October 2007 lot sales indicated the equalized assessments in the subdivision were low when compared to the sale prices; and
- (5) the subdivision was legally subdivided prior to April 1, 2006 and the Taxpayer has failed to provide evidence that an abatement is warranted.

### **Board's Rulings**

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

The threshold issue in this appeal is whether the Taxpayer had an approved subdivision plan as of April 1, 2006. The Taxpayer argued although the planning board approved the Kinkade Haven subdivision plan on July 21, 2005, it altered the conditions of the approval in its August 18, 2005 notice of decision to include a fifth condition that the "[a]pplicant meet with the Conservation Commission to discuss the open-space and report back to the Planning Board." The Taxpayer stated after extensive communication with the planning board and the Town's counsel, the Town's "improper actions" were not corrected until May 18, 2006. Thus, the Taxpayer argued the entire subdivision had minimal "fair market value" on April 1, 2006 because of the "cloud" on the Property created by the planning board actions and must be assessed as one lot in compliance with RSA 674:37-a.

**RSA 674:37-a Effect of Subdivision on Tax Assessment and Collection.**

The collection of taxes with respect to land being subdivided shall be governed by the following provisions:

I. If approval of a subdivision plat has been granted on or before April 1 of a particular tax year, giving the owner a legal right to sell or transfer the lots, parcels or other divisions of land depicted on the plat without further approval or action by the municipality, then such lots or parcels shall for that tax year be assessed and appraised as separate estates pursuant to RSA 75:9, whether or not any such sale or transfer has actually occurred, and shall continue to be so assessed unless and until subdivision approval is revoked under RSA 676:4-a, or the parcels are merged pursuant to RSA 674:39-a.

The board finds, through a review of the voluminous documents submitted at the hearing, the Taxpayer did, in fact, have an approved subdivision in place as of April 1, 2006. The only unresolved issue with the Town as of that date was how the open space land would be dealt with. The Taxpayer did admit, at the February 2006 planning board meeting, that he “did get on the Building Permit List for 2007” (Municipality Exhibit B at page 13) and thus, the board finds no reason to determine any or all of the lots could not be marketed. In fact, as of April 1, 2006, Map 39-11-1 located at 4 Memory Lane had received a building permit on January 3, 2006. Had there not been an approved subdivision in place, no building permit would have been issued by the Town for this lot.

Thus, the board finds the only issue to be determined is whether the Property was proportionately assessed relative to its market value as of April 1, 2006.

To carry his burden, the Taxpayer should have made a showing of the Property’s market value at its highest and best use as of the date of assessment, April 1, 2006. This value would then have been compared to the Property’s assessment and the general level of assessment in the Town. See, e.g., Appeal of Net Realty Holding Trust, 128 N.H. 795, 803 (1986); Appeal of

Great Lakes Container Corp., 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. 214, 217-18 (1985). The Taxpayer hired an appraiser, Steven J. Sawyer of S & S Appraisal Associates, Inc. (“Sawyer Appraisal”) who arrived at a market value of \$225,000 as of February 15, 2007. The board has given no weight to the Sawyer Appraisal because its estimated value is based on 154.9 acres of raw land with the notation that “useable land is unknown for this lot” and “[t]he subdivision potential is beyond the scope of this report.” This report is contrary to the highest and best use of the Property as a fifteen lot subdivision. As of the date of the Appraisal, there was no question the subdivision had been approved by the planning board and any analysis based on raw land is of no value in determining the market value of the Property. Although the Taxpayer’s contention is the lots could not be sold because of the “cloud” placed on the Property by the planning board, the appeal before this board is of the 15 lot subdivision totaling 17.161 acres, not the entire lot prior to subdivision. Therefore, the board finds the Taxpayer did not present any credible evidence of the Property’s market value.

To succeed on a tax abatement claim, the plaintiff taxpayer has the burden of proving by a preponderance of the evidence that he is paying more than his proportional share of taxes.

Porter v. Town of Sanbornton, 150 N.H. 363, 367 (2003); Appeal of Sokolow, 137 N.H. 642, 643 (1993). No substantive evidence was presented to prove the individual lots could not have been sold or developed as of April 1, 2006 even with an additional condition (regarding the open space land) placed on the approval.

Justice requires that an order of abatement not relieve the taxpayer from bearing his or her share of the common burden of taxation, notwithstanding any errors of law or fact pertaining to how the assessment was made. Porter v. Town of Sanbornton, 150 N.H. 363, 368 (2003). For example, proving the municipality lacked a “sound methodology” when it made the assessment

is not sufficient, unless there is proof of disproportionality. Porter v. Town of Sanbornton, 150 N.H. 363, 367-68 (2003). The Town, subsequent to the abatement request, abated the lots by applying a paper road adjustment of X .40 (60%). This adjustment was similar to other subdivisions in the Town as the road was not in as of April 1, 2006 and no bonding had been done. This testimony is evidence of proportionality. See Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Based on all of the evidence, the board finds the Property was not disproportionately assessed and the appeal is 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(g). 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

**Certification**

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Alvin R. Davis, III, 216 Flagg Road, Loudon, NH 03307, Taxpayer; Chairman, Board of Selectmen, Town of Loudon, PO Box 7837, Loudon, NH 03307; and David C. Wiley, Cross Country Appraisal Group, LLC, 210 North State Street, Concord, NH 03301, Contracted Assessing Firm.

Date: May 1, 2009

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Anne M. Stelmach, Clerk