

Joseph and Rose Marino

v.

Town of Greenfield

Docket No.: 10108-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$315,900 (land \$191,850; buildings \$124,050) on a 47-acre lot with a house on Cavender Road (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to meet their burden of proof and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the land is assessed at approximately \$4,000 per acre which is excessive for land that is mostly undeveloped;
- (2) the land was assessed as house lots without there being any certainty of obtaining a subdivision;
- (3) a six lot subdivision application in the mid 1980's was denied by the Town based on the inadequacy of the road and the poor drainage of the soils;

(4) thus the Town's basis of assessing the land as house lots is flawed due to the inability of obtaining a subdivision; and

(5) other than an estimate of a \$40,000 house lot value, the remaining land has a value of \$2,000 per acre.

The Town argued the assessment was proper because:

(1) the land was not assessed as subdivided lots, but the influence of frontage on value for future development potential was considered;

(2) the wet areas along the frontage were adjusted by a 30% topography reduction;

(3) the front foot prices used in assessing the Property were derived from sales that occurred prior to the 1990 reassessment; and

(4) the Taxpayers' subdivision was denied because the condition of Cavender Road and without improvements the subdivision was considered premature.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Taxpayer did not submit any market evidence to support his contention of a lower assessment. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty

Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Board finds the original seven lot subdivision was denied because the road needed to be upgraded to support anticipated additional traffic. The subdivision was approved for six lots with the developer paying \$10,000 for half the cost of any road improvements necessary.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

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Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Joseph and Rose Marino, Taxpayers; and Chairman, Selectmen of Greenfield.

Dated:

Valerie B. Lanigan, Clerk

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Joseph and Rose Marino

v.

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ORDER RE: MOTION FOR REHEARING

On September 9, 1994 the Board of Tax and Land Appeals (board) received a motion for rehearing (motion) from the Taxpayers. For the reasons below, the board denies the motion.

The motion did not raise any issues that were either not presented at the hearing or were unavailable to have been presented at the hearing.

Specifically, the issue before the board was one of disproportionality. The Taxpayers did not present any market evidence to show the Town's assessment methodology resulted in an assessment that was disproportionate. The board considered the facts surrounding the proposed subdivision but found there was no evidence to indicate that the Town's methodology did not adequately account for the unsubdivided status of the property as of April 1. Specifically, the Town did not use a 1-acre building lot method. Rather, the Town used a front-foot method which recognizes the unsubdivided status of the property through the topographical, excess frontage and undeveloped factors. The property assessment card, that contained the assessment under appeal, did indicate a 30% topographical

adjustment. An earlier assessment card, which

was subsequently revised, had a different topographical deduction.

In short, the Taxpayers failed to show how the inability to obtain a subdivision without condition made this property unique and in any way different from other property that had not received subdivision approval and resulted in the assessment being disproportionate.
SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Joseph and Rose Marino, Taxpayers; and Chairman, Selectmen of Greenfield.

Date: September 29, 1994

Valerie B. Lanigan, Clerk

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