

Bruce A. Montville

v.

Town of Hampton

Docket No.: 10816-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$220,500 (land \$65,300; buildings \$155,200) on Lot 1, a 23,936 square-foot lot with a house;

\$6,700 on Lot 2, a vacant, 10,888 square-foot lot;

\$6,600 on Lot 3, a vacant, 10,710 square-foot lot; and

\$2,500 on Lot 7, a vacant, 2,925 square-foot lot (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

(1) the lots are contiguous and there is not enough square footage for septic tanks on Lots 2, 3, and 7;

(2) in December, 1989, the Nuclear Regulatory Commission granted the nearby

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Seabrook Nuclear Power Plant ("Plant") an operating license which has impacted the market value of the Property;

(3) the direct view, sound and distance between the Property and the Plant is totally unobstructed;

(4) the Town's assessment formula does not include an influence factor for the Plant; and

(5) a full 100% abatement on the assessments is sought but a compromise of 50% would be acceptable.

The Town argued the assessments were proper because:

(1) any impact of the Plant was inherent in the 1988 and 1989 sales that were used to set the values for the revaluation;

(2) the Taxpayer had a bank appraisal (which tends to be reasonably conservative) done in September, 1990 for \$220,000;

(3) the equalization ratio for the 1990 tax year was 103% which indicated that the average property was assessed at 103% of value;

(4) it was not possible to discern from the sales that occurred subsequent to the licensing of the Plant any impact of the licensing event due to the general decline in the real estate market during that time period.

Board's Rulings

We find the Taxpayer failed to prove the Properties' assessments were disproportional.

The Taxpayer's main contention was that the Town's assessment process did not specifically consider the effect of the Plant on the Property. The board finds the

Plant is a factor that could negatively affect residential real estate value in the general proximity of the Plant and should be

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considered by the Town in the Property's assessment. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975) (In arriving at an assessment, the Town must consider at all relevant factors). The board finds the Town's analysis of sales during the 1988 reassessment inherently included any affect the Plant had on property in the area. Thus, the base values considered the Plant. Further, the Town testified it was unable to detect any measurable effect of the Plant licensing because of the general decline of values occurring at that time.

While the Taxpayer presented a factor that could affect value, he did not fulfill his burden in providing market data to support his assertion. Such market data could have included sales of comparable property with views of the Plant, the inability to market neighboring properties, financing difficulties and longer than normal marketing period. The only evidence the Taxpayer did submit was a September, 1990 appraisal done by The Stanhope Group, which supports the Town's abated assessment.

In short, the board finds the Town's methodology inherently included any effect of the Plant and the Taxpayer did not submit any market evidence to the contrary.

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 Page 4
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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bruce A. Montville, Taxpayer; and Chairman, Selectmen of Hampton.

Dated: July 20, 1994

Valerie B. Lanigan, Clerk

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