

Sawyer Brook Associates, Inc.

v.

Town of Grantham

Docket Nos.: 8612-90PT and 10955-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 and 1991 assessment of \$1,457,850 (land \$523,700; buildings \$934,150) on Sawyer Brook Plaza, a 4.1-acre lot with a bank, a service garage, retail stores, offices and a warehouse (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was 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 carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) a significant portion (31,544 square feet) of the land cannot be built upon and should not be taxed at a commercial rate;
- (2) the Town has adjusted other properties for wetlands or unbuildable; and
- (3) the retention pond is part of the site but not part of the development.

The Town argued the assessment was proper because:

- (1) the Town utilized the cost approach in arriving at the value of the improvements;
- (2) the land value was arrived at based on the same criteria developed during the revaluation with one rate for developed land and one for undeveloped; and
- (3) of the portion of land referred to by the Taxpayer, the retention pond was required for approval of the development of the Property for fire protection; the leaching area is necessary for the development; the portion along the road frontage is landscaped; a mini golf course was on the Property in 1991; and the slopes are 5-6 feet in the back.

Board's Rulings

We find the Taxpayer failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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. Further, the Taxpayer stated that the Property had recently been appraised by a bank but offered no written evidence as to its market value.

The board finds that the land supports the development and has been properly

assessed for the following reasons:

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- 1) a good portion of the land is necessary to maintain the 10 foot setback requirements and lot coverage ratios under the Town's zoning; and a leach field drainage is also required for the development;
- 2) the retention pond serves as fire protection which was a condition for the development's approval and is therefore necessary to support the development;
- 3) the Town adequately explained its methodology in depreciating non-commercial undeveloped land on building sites. The methodology would not apply to the subject because the site is a commercially developed property. Even if an adjustment for vacant land would be warranted, the Taxpayer offered no market evidence to substantiate this claim.

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

MacLellan, Esq., Member _____

Ignatius

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Larry Brodney of Sawyer Brook Associates, Inc., Taxpayer; and Chairman, Selectmen of Grantham.

Dated: June 20, 1994

Valerie B. Lanigan, Clerk

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