

Margaret G. Patterson

v.

Town of Rindge

Docket No.: 9019-90PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$61,050 on a vacant, 5.428-acre lot (the Property). For the reasons stated below, the appeal for abatement is granted.

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 carried her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has a long, private road running through the lot to service five neighboring lots, a drainage ditch was created for runoff from Route 119, and two abutting lots have the legal right to access the Property to install septic systems;
- (2) the lot cannot be subdivided because of its shape;
- (3) Karen Carnivale Real Estate Inc. rendered a professional opinion of value as of May, 1994 between \$44,900 and \$49,900; and
- (4) the Property is disproportionately assessed when compared to the abutter, Map 15

Page 2

Patterson v. Town of Rindge

Docket No.: 9019-90PT

Lot 8, the subject has less buildable space, less water frontage and the comparable land is more level.

The Town argued the assessment was proper because:

- (1) the Property was purchased for \$62,000 in June, 1989;
- (2) the subject has greater value because of its access to Crowcroft Pond and the topography of the water frontage is better than the abutter's waterfrontage;
- (3) current zoning prohibits septic in the area allowed for in the Taxpayer's deed, however, a 5% adjustment was allowed for this restriction; and
- (4) a topography adjustment has been applied for the site conditions.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$54,700 (land only).

Both parties presented credible evidence to support their various positions. The basic difficulty in determining a proper assessment for the Taxpayer's Property is:

- (1) scant market evidence; and
- (2) lack of certainty that the Town's methodology and adjustments applied to the Taxpayer's land adequately and proportionally assessed her Property.

However, the board has weighed the evidence supplied to it and finds that an abatement is warranted because:

- (1) An additional 10% adjustment should be applied to the road frontage calculation to account for the private right of way that accesses five properties beyond the Taxpayer's. There was no notation on the assessment-record card as to any adjustment for this right of way. While it is possible that such adjustment was

Page 3

Patterson v. Town of Rindge

Docket No.: 9019-90PT

considered part of the overall "topography" adjustment, the board finds the 50% adjustment is reasonable solely to account for the lot's development potential and utility versus its shape.

(2) The waterfrontage calculation should have an undeveloped factor of .89 rather than .99; it appears as if the Town inadvertently used the factor from the state of New Hampshire manual that pertains to a fully developed lot rather than an undeveloped lot.

(3) The resulting value of \$54,700 recognizes that the Taxpayer overpaid when she purchased the lot and also recognizes as the Town stated the application of the Town's high 1993 equalization ratio to an opinion of value in 1994 is not an exact science.

The value of lots on small waterbodies is not an easy thing to determine generally due to the lack of good market evidence. In addition, in this case, the subject lot has a very unusual configuration and all the various factors that would affect its value and utility should be considered. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975).

"It has been said that "[t]he search for "fair market value" is a snipe hunt carried on at midnight on a moonless landscape." Fusgni v. Portsmouth Housing Authority, 114 N.H. 207, 211 (1974).

In this case, the board finds the ordered abatement results in a proportional assessment and one that appears to be related as closely to market value as is possible given the limited evidence.

If the taxes have been paid, the amount paid on the value in excess of \$54,700

Page 4

Patterson v. Town of Rindge

Docket No.: 9019-90PT

shall be refunded with interest at six percent per annum from date paid to refund date.

RSA 76:17-a. Pursuant to RSA 76:16-a (Supp. 1991), RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1991, 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

Page 5

Patterson v. Town of Rindge

Docket No.: 9019-90PT

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Margaret G. Patterson, Taxpayer; and Chairman, Selectmen of Rindge.

Dated: June 16, 1994

0008

Valerie B. Lanigan, Clerk