

Wilfred and Ann Marie Belisle

v.

City of Claremont

Docket No.: 10923-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1991 assessment of \$133,850 (land \$36,600; current use \$2,750; buildings \$94,500) on a 33-acre lot containing a 1.5-acre house lot and the remaining 31.5 acres in current use (the Property). The Taxpayers did not appear but were granted leave consistent with our Rule, TAX 202.06. This decision is based on the evidence presented to the board. 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

- (1) the original MMC assessment was correct and missed nothing;
- (2) the house lot is not worth \$36,600 because of the "view";

- (3) the Property has only 111' of frontage and is at the foot of Green Mountain;
- (4) there is no city water, sewer, no sidewalks, and no street lights; and
- (5) two neighbors have deeded rights to a well on the Property.

The City argued the assessment was proper because:

- (1) during the 1990 revaluation, the enhancement to the land attributable to the view was missed and a correction was made by the Town;
- (2) the Property was on the market in 1993 for \$179,000 firm;
- (3) the Taxpayers had the Property appraised by a bank and listed it for sale for \$149,900 and a purchase and sale agreement has been executed in that amount;
- (4) the Taxpayers argued that the view was not an enhancement yet the MLS sheet states "50 MILE VIEWS - OPEN & WOODED ACREAGE";
- (5) market values have dropped from 1991 to 1994 and single family sales have seen the prevalent sales in numbers over this time period; and
- (6) the Town may have understated the value of the Property.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the City supported the Property's 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. Neither party challenged the Department of Revenue Administration's equalization value of 112% for 1991. The Property's equalized value is \$119,500 ($\$133,850 \div 1.12$). The Town submitted evidence that the Property was on the market in 1993 for \$179,000, and a purchase and sale agreement has been executed for \$149,900. The listing agreement stated the Property had 50 mile views and the evidence of a bank appraisal and the sale of the Property contradicts the Taxpayers assertion that the view has little value.

The Taxpayer argued the Property lacked city services. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Wilfred and Ann Marie Belisle, Taxpayers; and Chairman, Board of Assessors, City of Claremont.

Dated: August 5, 1994

Valerie B. Lanigan, Clerk