

Nancy K. Marden

v.

Town of Hopkinton

Docket No.: 11214-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$356,850 (land \$126,700; buildings \$230,150) on "Lot 10", a 7.40-acre lot with a house; and

\$78,050 (land \$25,000; buildings \$53,050) on "Lots 13.02 and 14.07", two condominium units in the River Grant Condominiums (the Properties).

The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 carry this burden and prove disproportionality.

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The Taxpayer argued the assessment on Lot 10 was excessive because:

- (1) the land slopes severely away from the house and drops 20 to 30 feet into a ravine, and the land is wet and contains a brook;
- (2) the Property's topography would not allow for more than one house lot, and therefore, the lot cannot be subdivided;
- (3) the assessment-record card shows only 2 of the lot's 7.4 acres are wet, when in fact 4.23 acres are wet and unusable;
- (4) the lot was purchased in 1983 for only \$23,000 because of the topography;
- (5) an April 1, 1991 appraisal estimated a \$265,000 value, and a realtor estimated a \$70,700 value for the land as of April 1, 1991;
- (6) a comparable lot with 100% level, usable and dry land had a \$129,100 land assessment, yet the Property, with only .64 acres of usable land, had a \$126,700 land assessment; and
- (7) the lot across the street is assessed only \$125 per-front-foot, yet the Property is assessed \$350 per-front-foot.

The Town reviewed the assessment on Lot 10, made an adjustment for the topography, and reclassified the rear acreage from "good" to "fair," resulting in the current assessment. The Town argued the adjusted assessment was proper because:

- (1) the Taxpayer provided no evidence to prove that the lot could not be subdivided, and despite Town zoning ordinances which would allow another lot, the Taxpayer is only assessed for one lot;
- (2) the topography was considered in the assessment;

(3) the Taxpayer's 1983 purchase price has no bearing on the 1991 value;

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(4) the Taxpayer's comparable sale (Grant) had the same road-frontage price, sold for \$96,000 in 1992, and was assessed for only \$62,150, which proves that buyers will pay more for a lot with added privacy;

(5) the lot across the street was assessed at \$350 per-front foot -- the Taxpayer used the wrong assessment-record card;

(6) undeveloped lots are not comparable to the Property because developed lots have more utility and value;

(7) the Taxpayer would not allow the Town to inspect the house, but the Town's replacement cost is comparable to the Taxpayer's appraisal and the Property is equitably assessed; and

(8) the Taxpayer's comparables are not comparable because the buildings are smaller and inferior in quality, and the front-foot values are lower because the comparables are located in other neighborhoods across Town.

The Taxpayer argued the assessments on Lots 13.02 and 14.07 were excessive because:

(1) an April 1, 1991 appraisal estimated a \$67,800 value; and

(2) condominiums in the development sold in 1991 for between \$54,000 and \$67,000.

The Town reviewed the condominium's assessments and all the units in the development were adjusted -\$10,000, resulting in the current assessments. The Town argued the assessments on Lots 13.02 and 14.07 were proper because:

(1) the Taxpayer's comparables are foreclosure sales and were later resold for

\$65,000 to \$72,000 each; and

(2) a comparable-sales analysis shows the condominiums sold for \$125,000 in 1989.

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The board's inspector reviewed the assessment-record cards and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation. In this case, the board did not rely on the inspector's report because the inspector did not perform an on-site inspection of the Properties and is no longer employed by the board.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Properties' assessments were disproportional for the following reasons.

##### Lot 10

The Taxpayer's appraiser utilized the cost and the market approach to arrive at a value for the Property, giving most weight to the market approach.

The board has reviewed the appraisal and finds that the comparables used were all less expensive homes in different neighborhoods and the appraiser failed to describe the adjustments applied to each comparable. For example, a \$12,500 adjustment was made to comparable #1 for lack of a stable, yet the appraiser offered no evidence of how he arrived at its value (either through comparable sales or use of the reproduction-cost approach). Comparables 2 and

3 were said to have superior land, but no explanation was provided as to how the adjustments were applied. Time adjustments were made with no supportive evidence of market trends. In his cost approach, the appraiser assigned a value for "extras" without any indication of how the values were arrived at

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(i.e. farm porch, stable/garage, deck). No supportive evidence was supplied to explain the physical and functional depreciation applied. Further, the appraiser estimated a site value for the land without any documentation.

The board finds that the Town did not assess the land as two lots and the land has been appropriately adjusted to account for its topography. The board notes that all of the wetlands and ravine provide a special and geographic buffer to the house site. Further, the Grant sale of Lot 5/92 for \$96,000 indicates that the market recognizes the protection and privacy that excess frontage provides. The board further notes that the Taxpayer's cost approach, if an appropriate site value is applied, supports the Town's assessment.

Lots 13.02 and 14.07

The Taxpayer's appraiser utilized sales of comparables which he termed "arms length," yet the evidence indicates that these sales were in fact sales of previously foreclosed properties purchased at foreclosure auction by Comprehensive Realty Services along with 3 other units, and these sales were not representative of market value. The Town introduced evidence of sales in 1992 which support the assessment.

The Town testified the Properties' assessments were arrived at using the same methodology used in assessing other properties in the Town. This

testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

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A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration 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 in 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 reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nancy K. Marden, Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: March 31, 1994

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Lynn M. Wheeler, Deputy Clerk

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