

Charles H. LaRoche

v.

Town of Peterborough

Docket No.: 11218-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$232,600 on a vacant, 57.44-acre lot (the Property). 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 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 meet this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the land is swampy and steep, and the abutter has a right-of-way for access;
- (2) the Property cannot be subdivided into six lots because Route 101 is a limited-access highway and only one access is allowed for the Property;

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(3) 500 to 600 feet of the road frontage is now classified as wetlands and cannot be crossed and nonusable frontage should not be included in the value; and

(4) an October, 1991 appraisal estimated a \$90,000 value.

The Town argued the assessment was proper because:

(1) the Property could be subdivided into six residential lots and is assessed accordingly;

(2) the Property's highest and best use is developed, residential sites;

(3) the Property has 1,150 feet of frontage on Route 101;

(4) in calculating the Property's assessment, the Town used the average vacant-land sale price of \$41,084, applied an influence factor for the rear acreage and site-preparation costs, and then multiplied by six for the number of potential sites;

(5) the Property has been approved for a 17-site subdivision but was only assessed for having six potential sites; and

(6) the subdivision approval increased the Property's value.

The board's prior inspector and present inspector reviewed the assessment-record cards and the parties' briefs and filed reports with the board (copies enclosed).

In this case, the inspectors only reviewed the file; they did not perform on-site inspections. The prior inspector's report concluded the proper assessment should be \$230,320. This inspector stated the Town's 1992 adjustment should also be applied to tax year 1991, while the present inspector concluded no adjustment was warranted.

Note: The inspectors' reports are not appraisals. The board reviews the reports and treats the reports as it would other evidence, giving them the weight they deserve.

Thus, the board may accept or reject the inspectors' recommendations.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer's appraisal by appraiser Chapman as of October 2, 1991, fails to recognize a reasonable contributory value to the "57.44-acre vacant land parcel at Rt.101, Peterborough, N.H." Based on the Town's permission to build 17 houses on the land, the appraiser acknowledged that two to five houses on its site would be "likely" given the poor real estate market. Access to the lot is by gravel drive from Rt. 101. Utilities are available on Rt. 101. There is 1,152.74 feet of frontage on Rt.101.

The board finds a present worth of future benefits substantially in excess of the \$90,000 value found by Chapman. Sale number one is given the greatest weight by appraiser Chapman. This 32.54-acre parcel purchased by L.G. Reynolds, located near Reynolds Drive, was landlocked at the time of the sale. No adjustment was made or noted by the appraiser. The board, therefore, gives little or no weight to sale number one in spite of the appraiser's statement, "Sale number one is more reliable as it reflects what a builder-developer would pay for a large vacant land tract in Peterborough in the current market."

Finally, this conclusion is consistent with the report filed by the board's present inspector. The prior inspector's report was not relied upon because of its brevity, and the inspector's question about whether a "topo" adjustment was warranted.

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

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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.

AND LAND APPEALS

BOARD OF TAX

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles H. LaRoche, Taxpayer; and Chairman, Selectmen of Peterborough.

Dated: May 2, 1994

Deputy Clerk

Lynn M. Wheeler,

0008

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**BOARD OF TAX AND LAND APPEALS
REVIEW APPRAISER'S WORKSHEET**

Town Name: Peterborough **Docket #:** 11218-91pt

Owner's Name: LaRoche, Charles H.

Property Address: Route 101

Property Type: Vacant Land

Total Assessment: \$232,600

DRA's Ratio: 1.11 **COD:** 13.24%

Equalized Total Assessment: \$209,550

Total Land Area(TLA): 57.44 acres **Road Front Feet(FF):** 1,150 feet

Equalized Total Assessment per TLA: \$3,648 per acre

Equalized Total Assessment per FF: \$182.22 per front foot

Type of Review: Office **Date of review:** April 6, 1994

Report Submitted: April 6, 1994

Comments: The subject lot is a vacant piece of land that has 57.44 acres and 1,150 feet of frontage along Route 101. It is located in the rural zone which requires 200 feet of frontage and a minimum lot size of 3 acres. The lot sold on December 12, 1986 for \$170,000. The grantee was the current owner, Charles LaRoche. On December 11, 1991, the lot transferred back to Charles LaRoche through a foreclosure deed.

The lot has approval for 17 residential house lots. The lot has adequate frontage for only 6 lots, per the town's report; therefore, a road would need to be put in to provide the additional frontage for the remaining 11 lots.

The town's report indicates that the highest and best use of the lot is as 6 potential lots, while the taxpayers report indicates that the best use is as 2 to 5 lots. I agree that 1991 market conditions make it unfeasible to develop all 17 lots immediately due to the cost of the road, etc.; however, I would expect a prospective buyer to keep the option open for the future. It is my opinion that the highest and best use of this lot is to develop 5 lots immediately and develop the additional 12 lots once

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market conditions improve.

It is very difficult to draw a conclusion of market value from the information in the Board's file. The town's report provides 30 vacant land sales; however, the most recent sale occurred in January of 1989, more than two years prior to the assessment date. In addition, only 6 lots have the potential for more than 1 lot and the only lot that had the potential for more than 3 lots is the sale of the subject property.

The taxpayer's report provides three sales, two of which are within three months of the assessment date and one that is within eighteen months. The subject lot has the immediate potential for 5 lots and the future potential for an additional 12 lots; therefore, any comparison to other lots **must** include a comparison of the number of potential lots. In the description of the three comparable sales, there is no mention of the number of potential lots. Comparable sale #1 is chosen as the most comparable sale; however, this lot has no road frontage. In order to develop even one lot, a road would first have to be developed. No adjustment was made to account for this substantial difference.

Conclusion: It is the taxpayers burden to show that they are disproportionately assessed. While the town's report is weak, I see no evidence from the taxpayer to support a lower assessment. The only concrete evidence is the sale of the subject property in December of 1986. The equalized assessment of \$209,550 is 23.3% higher than the sale of \$170,000. Market conditions did begin to decline in late 1989 and early 1990; however, market conditions rose sharply through 1987 and 1988. Based on this alone, the assessment seems reasonable.

Very truly yours,

Scott W. Bartlett
Board of Tax and Land Appeals
Review Appraiser