

Robert E. and Stella Bussiere

v.

Town of Peterborough

Docket No.: 11225-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$225,752 (land \$113,652; buildings \$112,100, which included \$14,500 for paving) on a 1.6-acre lot with a commercial garage (the Property). (Note: The board has assumed an abatement check, with interest, has been issued for the reduced assessment. If not, the Town shall do so.) The Taxpayers 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 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 carry this burden and prove disproportionality.

Page 2

Bussiere v. Town of Peterborough

Docket No.: 11225-91PT

The Taxpayers argued the assessment was excessive because:

- (1) only .62 acres of the Property is usable because the rest is in the conservation and wetlands zones;
- (2) a drainage swale runs along the entire southern boundary of the lot, which restricts use;
- (3) zoning restrictions prevent the Taxpayers from conducting business normally associated with this type of property, i.e., oil changes, lube jobs, and servicing lawn-care equipment, but abutting garages do not have these restrictions;
- (4) the building is prefabricated steel beam and was constructed in 1990 for only \$106,877;
- (5) the assessment-record card contains an error, i.e., the Property is not a two-acre lot; and
- (6) abutting lots were assessed \$1.00 to \$1.30 per-square-foot for paving, yet the Property was assessed \$1.45 when the actual cost to pave was only \$.55.

The Taxpayers submitted a letter from an appraiser who reviewed the Property and the \$237,600 unadjusted assessment.

The Town adjusted the assessment to \$225,752 after addressing the land issues and correcting the acreage. The Town argued the adjusted assessment was proper because:

- (1) the Taxpayers purchased the Property in May, 1989, for \$155,000, demolished the building, and constructed the present garage;
- (2) the lot is in the commercial zone and is assessed consistently with other similar properties at \$125,000 per-acre;

Page 3

Bussiere v. Town of Peterborough

Docket No.: 11225-91PT

(3) the Taxpayers' \$.55 per-square-foot price for paving only included a single coat of asphalt; and

(4) the Taxpayers' assessment for paving was \$.725 per-square-foot, not \$1.45, and the abutting lots were assessed less for paving because their paved areas were twice the size of the Property's paved area and the larger the job, the smaller the per-square-foot cost.

The board's inspector reviewed the assessment-record card 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. This report concluded the proper assessment should be \$221,400. The inspector adjusted the paving assessment to reflect the actual cost and applied additional economic depreciation to the land value to address the restrictions. 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.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The board bases its decision on the following:

- 1) the Town's adjusted assessment reflects some of the Taxpayers' concerns;
- 2) the Taxpayers' actual land and building costs support the assessment (see details

Bussiere v. Town of Peterborough

Docket No.: 11225-91PT

below);

3) the adjusted assessment is consistent with the board inspector's report; and

4) the board did not find the appraiser's letter persuasive.

The best evidence concerns the Taxpayers' actual land and building costs. Presented below is a comparison between the Town's assessment and the Taxpayers' actual costs. It demonstrates that the assessment is fair and consistent with what somebody on the market decided to pay for the Property.

	<u>Town</u>	<u>Taxpayers</u>	<u>Taxpayers with 10% depreciation on building</u>
building	\$ 97,600	\$108,880	\$ 98,000
paving	\$ <u>14,500</u>	\$ <u>11,000</u>	\$ <u>11,000</u>
	\$112,100	\$119,880	\$109,000
plus land	\$ <u>113,652</u>	\$ <u>125,000</u>	\$ <u>125,000</u>
	\$225,752	\$244,880	\$234,900

Note: Does not include demolition costs or planning approval costs.

Equalized assessment = \$203,380 ($225,752 \div 1.11$).

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

Page 5

Bussiere v. Town of Peterborough

Docket No.: 11225-91PT

limited

Page 6

Bussiere v. Town of Peterborough

Docket No.: 11225-91PT

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

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 Robert E. and Stella Bussiere, Taxpayers; and Chairman, Selectmen of Peterborough.

Dated: May 2, 1994

Lynn M. Wheeler, Deputy Clerk

0008