

Lewis Builders Development, Inc.

v.

Town of Plaistow

Docket No.: 11226-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$110,500 (land only) on a 4.7 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 met the burden of proof.

The Taxpayer argued the assessment was excessive because:

- (1) the land is not owned by the Taxpayer, but is actually owned by the Bryant Woods Condominium Association;
- (2) due to the encumbrances of open space restrictions and covenants on the Property, there remains no intrinsic value;
- (3) the Property is approximately 5 acres located in Plaistow, a small portion of a 170 acre residential condominium mostly located in Atkinson;

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(4) any value the Property may have is already captured in the assessment of the residential units in Atkinson;

(5) because the Property is comprised of very poorly drained soils, the Property is not eligible to meet zoning density requirements.

The Town's assessor stated he agreed with the Taxpayer but was unable to convince his board of selectmen that the Property has no remaining value that has not already been taxed as part of the condominium development in Atkinson.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$100. This assessment is ordered because the board finds that the parcel identified as map 17-B-1 lot 8 is 4.7 acres of exclusively wetland, situated entirely in the Town of Plaistow encumbered by a conservation easement with no possibility of development. Further, the Taxpayer represents that the wetland parcel in Plaistow contributed no building density credit to the developable portion of the Bryant Woods project located in Atkinson, New Hampshire.

To the extent that the subject parcel of 4.7 acres of wetland would otherwise have any value, such value is already included in the assessed value of each condominium unit, the owners of which units own an undivided interest in all the common land.

However, the board is uncomfortable assigning a value of zero dollars to any parcel of land, particularly one which could conceivably contribute some minimum aesthetic value for bird watchers, environmentalists or other passive uses like holding the proverbial earth together. The board therefore, assigns a nominal \$100 value.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 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 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert H. Fryer, Esq., counsel for Taxpayer; and Chairman, Board of Selectmen of Plaistow.

Dated: May 5, 1995

Valerie B. Lanigan, Clerk

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