

Steven A. and Gail C. Soboleski

v.

Town of Westmoreland

Docket No.: 11291-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$152,000 (land \$56,500; buildings \$95,500) on a 1.6-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, map R-11, L-39 (land \$3,100; building \$1,600; total \$4,700). 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 granted.

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 carried their burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property abuts two businesses and the machinery noise detracts from

the Property's value;

(2) the assessment was based on the Property's view, yet the only real view is the abutting businesses;

(3) the Property's view of the valley is obstructed 6 to 8 months out of the year because of tree foliage;

(4) neighboring properties with superior views had lower land assessments than the Property;

(5) the assessment was not appealed sooner because of personal hardship, yet just because it was not appealed before now does not mean the assessment was considered fair; and

(6) whether or not the abutting business properties are owned by relatives has no bearing on the assessment -- the fact remains they are businesses and detract from the Property's value.

The Town argued the assessment was proper because:

(1) the Taxpayers' comparable-land values only included the first-acre assessment and not the total land assessment;

(2) the abutting businesses are owned by the Taxpayers' relatives, and the land values were within range of the Property's land value;

(3) the Property's view to the west includes a valley and mountains;

(4) the Property's assessment was based on values established during the 1989 revaluation and was not disputed until now; and

(5) the Property's land value was well within the range of comparable properties throughout the Town.

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 \$138,250

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(land \$42,750; buildings \$95,500). The inspector adjusted the land assessment because the Property's view is obstructed for most of the year. 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.

Board's Rulings

Based on the evidence, the board finds the review appraiser's land adjustment to be reasonable and rules the view factor should be reduced from 2.00 to 1.50. The correct 1991 assessment should be \$138,250 (land \$42,750; building \$95,500).

The board finds the fact that the Taxpayers have not previously filed for an abatement is immaterial. Likewise, the fact that economic depreciation is caused by abutting properties owned by relatives is no reason to ignore the negative impact on market value.

If the taxes have been paid, the amount paid on the value in excess of \$138,250 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992 and 1993. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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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

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 Steven A. and Gail C. Soboleski, Taxpayers; and Chairman, Selectmen of Westmoreland.

Dated: August 4, 1994

Lynn M. Wheeler, Deputy Clerk

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