

Raymond J. and Susan E. Pelletier

v.

Town of Newfields

Docket No.: 11364-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$302,400 (land \$187,550; buildings \$114,850) on a 3.5-acre lot with a house (the Property). 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 this burden and proved disproportionality.

Taxpayers Arguments

The Taxpayers argued the assessment was excessive because:

(1) the Property's shape, terrain and river frontage limits usage and prevents subdivision;

Page 2

Pelletier v. Town of Newfields

Docket No.: 11364-91PT

(2) wetlands and sewerage limit the river-front usage, and considerable money and permits would be incurred to construct a boat launch;

(3) the Property fronts on Route 108, which is busy and dangerous, and the Property receives no Town services;

(4) the Property is in a commercial zone, yet there is no business being conducted, and similar lots in the neighborhood have lower assessments;

(5) the Property will be on a dead-end road when a bypass is constructed, and the proposed bridge will obstruct the house from even being seen from Route 108;

(6) the Property would not sell for the assessed value; and

(7) the Town, after discovering an error in the front-foot price, offered to abate the taxes and correct the error, but only if the Taxpayers would drop the appeal.

Town's Arguments

The Town offered to abate the assessment to \$277,600 (land \$162,750; buildings \$114,850) to correct the erroneous water-front calculations, but the Taxpayers refused to accept the adjusted assessment. The Town argued the adjusted assessment was proper because:

(1) river property has greater value;

(2) there is no odor from the river;

(3) the Property's assessment did not include a boat ramp; and

(4) the Property is in a commercial zone, but is assessed at residential rates.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$259,750 (land, \$144,900; buildings, \$114,850). This assessment is ordered because:

- 1) the front-foot-unit price should be corrected from \$600 to \$500 based on evidence of both the Taxpayers and the Town;
- 2) the topography adjustment should be reduced from .85 to .75 to reflect the impact on value of the utility, topography and configuration of the lot; and
- 3) a \$5,500 value for the well and septic should be added to be consistent with other properties in Town; the Town omitted placing a value on those utilities.

In summary, the assessed value is calculated as follows:

Frontage Assessment	\$ 89,300
Rear Land	<u>\$ 3,300</u>
Subtotal	\$ 92,600
River influence factor	<u>x 1.50</u>
Total	\$138,900
Stone driveway	\$ 500
Well and septic	<u>\$ 5,500</u>
Total land value	\$144,900

No further abatement is warranted because:

- 1) with these corrections, the Property is assessed consistently with other river-front lots;
- 2) the Property's assessment is well within the range of comparable properties with the \$500 front-foot-unit price and 1.50 river-influence factor;

3) no sales were submitted indicating values have declined because of any river odor; and

Page 4
Pelletier v. Town of Newfields
Docket No.: 11364-91PT

4) the Property is in a commercial zone, but was assessed at residential rates.

On its own motion, the board orders the Town to refund the Taxpayers' filing fee of \$65.00 pursuant to RSA 76:17-b. The board finds, based on the evidence submitted, the Town was willing to conditionally abate the assessment by correcting the front-foot price from \$600 to \$500 if the Taxpayers would withdraw their appeal to this board. The board finds that such clerical errors or clear errors of fact should not be a point of negotiation between the Town and the Taxpayers, but should as a matter of fairness be corrected by the Town when brought to their attention. If that adjustment had been made, the Taxpayers may still have appealed to this board. However, the Town was improper in not making the correction. The lack of correction was one factor that precipitated the appeal to this board, and thus, under RSA 76:17-b, the filing fee should be refunded.

If the taxes have been paid, the amount paid on the value in excess of \$259,750 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20)

Page 5
Pelletier v. Town of Newfields
Docket No.: 11364-91PT

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

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Raymond J. and Susan E. Pelletier, Taxpayers; and Chairman, Selectmen of Newfields.

Dated:

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Lynn M. Wheeler, Deputy Clerk