

Knud B. and Mary Elizabeth Nielsen

v.

Town of Holderness

Docket No.: 11374-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$195,800 (land \$142,500; buildings \$53,300) on a .27-acre lot with a camp (the Property). The Taxpayers also own, but did not appeal, three other lots in the Town with a combined, \$306,700 assessment. 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

(1) similar sized lots have lower land assessments than the Property;

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(2) the assessment includes a deeded right-of-way to the lake that was removed by deed; and

(3) the land assessment should be consistent with the abutters.

The Town failed to submit any arguments to support the assessment and was finally defaulted.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value.

This value would then have been compared to the Property's assessment and the level of assessments generally in the Town. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18. The Taxpayers argued that they should not be assessed for the Property's deeded right-of-way to the river because the right-of-way has been removed. The date of assessment under appeal is as of April 1, 1991, and the quitclaim deed extinguishing the right-of-way was not executed until December 4, 1992. Therefore, as of April 1, 1991, the Town properly assessed the Property for its deeded right-of-way. The board reminds the Town, however, of its duties to annually review its assessments and adjust those that have declined or increased more in value than values generally changed in the Town.

RSA 75:8 states:

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The assessors and selectmen shall, in the month of April in each year, examine all the real estate in their respective cities and towns, shall reappraise all such real estate as has changed in value in, and shall correct all errors that they find in the then existing appraisal the year next preceding and shall correct all errors that they find in the then existing appraisal; and such corrected appraisal shall be made a part of the inventory in such cities and towns; and the inventory thus revised shall be sworn to, as provided in RSA 75:7.

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

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Knud B. and Mary Elizabeth Nielsen, Taxpayers; and Chairman, Selectmen of Holderness.

Dated: May 5, 1994

Lynn M. Wheeler, Deputy Clerk

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