

Estate of Bernard D. Chapman

v.

Town of Tilton

Docket No.: 11482-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of: \$112,900 (land \$51,100; buildings \$61,800) on Lot 10, a 9-acre lot with a house; and \$6,400 on Lot 18, a vacant, 6.4-acre woodlot (the Properties). The Taxpayer 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 abatements is denied.

The Taxpayer has the burden of showing the assessments were 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 failed to prove disproportionality.

The Taxpayer argued the assessments were excessive because:

- (1) an October 9, 1991 appraisal estimated a \$75,000 value for the Properties;
- (2) the Properties have been listed for sale since 1991 with no offers; and

(3) the Properties' values have not increased enough to warrant the increase in taxes.

The Town argued the assessments were proper because:

- (1) the Taxpayer's appraisal was flawed because no data was provided to substantiate the comparables;
- (2) the assessments were based on a sales analysis performed during the revaluation, and the Properties were assessed equitably with other properties in the Town;
- (3) the same methodology was used throughout the Town;
- (4) Lot 10's backland was depreciated for bulk and topography, and the excess frontage was also depreciated;
- (5) the woodlot was assessed as backland and further reduced 50% for location and topography; and
- (6) the Properties are separate lots and do not abut each other and, therefore, should be considered and assessed as separate lots pursuant to RSA 75:9.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Properties were disproportionately assessed. The Taxpayer did not present any credible evidence of the Properties' fair market value. To carry this burden, the Taxpayer should have made a showing of the Properties' fair market value.

This value would then have been compared to the Properties' assessments 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 Taxpayer submitted an appraisal by Paul Doucette

which estimated the fair market value as of October, 1991 to be \$75,000. The board found the appraisal to be of little probative value because:

- (1) it failed to provide the lot sizes of the comparables;
- (2) it failed to document any of the adjustments made to the comparables; and
- (3) in the cost approach, a land value was assigned without any evidence of market data to support the value, and there was no indication that any adjustments were made for the subject's two non-contiguous lots.

Because the appraisal failed to provide the above, the board was unable to accept the appraiser's value conclusion.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982). The board finds the Town supported the Properties' assessments and made appropriate adjustments for the condition of the lots based on market data.

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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Bernard W. Chapman, Executor of the Estate of Bernard D. Chapman, Taxpayer; and Chairman, Selectmen of Tilton.

Dated: June 22, 1994

Lynn M. Wheeler, Deputy Clerk