

Murray J. Dickinson

v.

Town of Plaistow

Docket No.: 11539-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$63,850 on Lot 18, a vacant, 3.07-acre lot;

\$59,750 on Lot 18A, a vacant, 3.11-acre lot; and

\$50,800 on Lot 18B, a vacant, .99-acre lot (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 carry this burden and prove disproportionality.

Page 2

Dickinson v. Town of Plaistow

Docket No.: 11539-91PT

The Taxpayer argued the assessments were excessive because:

- (1) the Properties are wet because of storm drains installed by the Town;
- (2) the Town demanded the Taxpayer enter into an agreement with the neighboring condominium to pay for maintenance, insurance and liability of Cifre Lane;
- (3) the Town residents, in March 1991, voted Cifre Lane a Class V road, but the Selectmen ignored the vote and would not maintain the road because it was a Class VI; and
- (4) lot 18 was almost purchased in 1991 for \$70,000, but because of the road-maintenance issue and the condominium fees, the buyers backed out, and the Taxpayer lost other potential buyers because of the road issue.

The Town argued the assessments were proper because:

- (1) the Taxpayer voluntarily signed the agreement to maintain the road;
- (2) the land value was depreciated 10% to address the wetness and drainage easements and the Class VI road was addressed with an additional 10% depreciation;
- (3) the Taxpayer provided evidence that the 1991, \$70,000 sale contract would have to be renegotiated, not voided, because of the road;
- (4) the tax bills only showed the wrong acreage amount, but the values were correct;
- (5) the lots are buildable if the Taxpayer complies with all written agreements; and
- (6) the Taxpayer provided no market data to prove overassessment.

Board's Rulings

Based on the evidence, we find the Taxpayer failed to prove the Properties' assessments were disproportionate.

For the 1991 tax year, the department of revenue administration determined that assessments in the Town of Plaistow were at approximately 1.35% of market value. Therefore, to determine whether the assessments under appeal approximate 1991, values they must be adjusted by the 1.35% equalization ratio. Equalizing the assessments indicates market values of \$47,296 for lot 18, \$44,259 for lot 18A and \$37,630 for lot 18B.

As stated in the board's 1989 and 1990 decisions, (Docket Nos.: 6041-89 and 8823-90), the Taxpayer did not present any credible evidence that the assessments did not reflect market value. The Taxpayer presented much evidence about the legal ramifications dealing with the status of the road by the Properties. However, as of April 1, 1991, that issue had not been resolved in the action filed in superior court. Therefore, the board must determine whether the assessments are reasonable given all factors, including uncertainties related to the road, that affect the lots' values. See Paras v. City of Portsmouth, 115 NH 63, 68 (1975) (town must consider all relevant factors). The Town adjusted all lots for the unresolved legal issues and adjusted lot 18 for the drainage concerns raised by the Taxpayer. The board finds these adjustments to be reasonable based on the evidence and in fact appear to be in a general fashion supported by the market activity related to the lots. The Taxpayer indicated that an agreement to purchase lot 18 for

\$70,000 was not consummated due to the uncertainty of the status of the road.

However, the Taxpayer did state in his May 27, 1992 correspondence to the
Page 4

Dickinson v. Town of Plaistow

Docket No.: 11539-91PT

board that he had "a deal going" for \$40,000 on lot 18B. While the board does not know any of the details of this "deal," it does indicate the ability of the Taxpayer to market the Properties, albeit with agreements relative to the road maintenance.

In short, the evidence supports the Town's contention that the assessments do reasonably reflect the effect of the uncertainty of the status of the road on the Properties' market value.

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

Page 5
Dickinson v. Town of Plaistow
Docket No.: 11539-91PT

Paul B. Franklin, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Murray J. Dickinson, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated: June 24, 1994

Lynn M. Wheeler, Deputy Clerk

0004

Murray J. Dickinson

v.

Town of Plaistow

Docket No.: 11539-91PT

ORDER

On July 7, 1994, the Taxpayer filed a motion for rehearing of the board's decision of June 24, 1994 (Decision). The motion requested a rehearing primarily related to two issues:

- 1) The Taxpayer was under the assumption that a hearing would be held at which he would be able to bring his attorney to state his case; and
- 2) The legal action related to the status of the road resulted in his Property having little or no value. For the reasons that follow, the board denies the motion for rehearing.

Both the Taxpayer and the Town opted to waive an oral hearing and submit their arguments in writing under the board's expedited procedure outlined in TAX 207. This procedure was detailed in a questionnaire submitted to the Taxpayer on December 15, 1992 to which the Taxpayer replied on February 17, 1993 that "If all information is stated properly, in order to make a fair judgment on my appeal, "without a hearing Yes" will be favorable". The board deliberated on this case by reviewing the parties' submittals. The Taxpayer submittal was quite lengthy and provided a clear description and chronology of

the legal issues related to Cifre Road on which the Property fronts. Because the Taxpayer was aware of the expedited procedure, specifically chose it and submitted lengthy documentation as to his arguments, the board finds a rehearing is unnecessary.

The Taxpayer's claims that his Property had little or no value as of the assessment date was not substantiated with any market evidence. To the contrary as discussed in the Decision, the Property was impacted by the legal restrictions on Cifre Road but was by no means valueless. Even if the Property may not have been marketable at that point in time there is always a present worth to future benefit of being able to market the Property after the legal issues have been resolved. In fact, the Taxpayer infers that at a later date with the legal issue related to Cifre Road still unresolved, he was able to "work a deal" at a value similar to the equalized assessed value.

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 order has been mailed this date, postage prepaid, to Murray J. Dickinson, Taxpayer; and Chairman, Selectmen of Plaistow.

Dated:

Lynn M. Wheeler, Deputy Clerk