

Eugene F. and Judith H. Armento

v.

Town of Swanzey

Docket No.: 11543-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$100,200 (land \$17,100; buildings \$83,100) on a 4-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 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's assessment was disproportionate.

The Taxpayers argued the assessment was excessive because:

- (1) the City of Keene has threatened to clear cut the Property's trees because of the abutting airport;
- (2) the Property sits on the western slope of Marcy Hill -- the airport's

eastern approach to a landing strip;

- (3) local realtors estimated a 50% decrease in the Property's market value because of the negative publicity and law suits; and
- (4) the negative publicity started as early as 1990.

The Town argued the assessment was proper because:

- (1) the assessment was based on the Property's value as of April 1, 1991; and
- (2) the airport issues are still pending and the assessment cannot be abated to address concerns that have yet to occur.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional.

The possibility of trees being cut by the City of Keene could have an affect on the Property's value. However, the Taxpayers did not present any credible evidence of the extent of that effect and the resulting fair market value of the Property. 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 stated in one of their arguments that realtors have indicated their 1993 Property value is less than half it was in 1991 (Taxpayers' correspondence to board dated January 4, 1993). The appeal before the board, however, is for the 1991 tax year, not 1993. Regardless, the Taxpayers did not submit any market evidence for either 1991 or 1993.

While the Taxpayers did submit some evidence as to what was public knowledge, it was difficult to tell from the incomplete nature of the evidence as to when, and if the public had full knowledge as of April 1, 1991 of the legal issues surrounding the cutting of trees. Most of the newspaper clippings and first page of a document filed at superior court relate to 1992, not 1991.

Further, the board notes the Taxpayers purchased the Property in January, 1989 for \$152,500. [Nothing was submitted by the Taxpayers as to how knowledgeable they were at the time of the purchase of any impending legal issues.] Further, if the Taxpayers felt they had overpaid for the Property, they did not state any specific reasons other than the subsequent legal issues. Regardless, the board notes that the indicated market value by applying the 1991 equalization ratio to the assessment ($\$100,200 \div .87 = \$115,172$) is significantly less than what the Taxpayers purchased the Property for just two years prior to 1991.

In short, while the uncertainty surrounding the legal issues related to cutting of trees could have an affect on market value, the Taxpayers did not submit any evidence to provide the board a basis for ordering a lower assessment.

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 Eugene F. and Judith H. Armento, Taxpayers; and Chairman, Selectmen of Swanzey.

Dated: June 30, 1994

Lynn M. Wheeler, Deputy Clerk