

**William E. and Ingrid Byrd**

**v.**

**Town of Candia**

**Docket No.: 11660-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$107,950 on a 26-acre lot with 24 acres in current use (CU) and a 2-acre lot not in CU (NICU) with house (the Property). 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 carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) 20 of the 27 acres are in the Zone A floodplain, requiring additional topographical adjustments;
- (2) the building is also in the Zone A floodplain, requiring economic depreciation; and
- (3) adjustments should have been made to the assessments for the fireplace.

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The Taxpayers also disagreed with the Town's comparables, arguing the comparables had better topography given the Property's location in the floodplain.

The Town argued the assessment was proper because:

- (1) the Town viewed the Property twice and adjustments were made based on the Taxpayers' concerns;
- (2) the assessment was consistent with the sales and the sales analysis that were reviewed for the revaluation, including sales proximate to the Property;
- (3) the Town adjusted for the floodplain by giving an additional 20% topography adjustment to the Property's land assessment;
- (4) the house is 100 feet from the Ward Brook, and the FEMA field survey does not show the house as being in the Zone A floodplain; and
- (5) the Taxpayers did not submit any market information to show the Property was overassessed.

#### Board's Rulings

Based on the evidence, the board finds the Taxpayers did not show overassessment.

As stated above, the burden of proof is on the Taxpayers to show the Property was overassessed, and the Taxpayers did not carry this burden.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their 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 attempted to rely upon an appraisal of a property across the road, but this did not carry the Taxpayers' burden because the appraisal was not for this Property. Appraisals are property specific.

Despite the Taxpayers' protestations at the hearing, the Town made a good-faith effort to review this Property and its assessment. Specifically, the Town adjusted the assessment by 20% due to the floodplain. This 20% adjustment correlates to a \$20,600 reduction for the floodplain. The Taxpayers did not show that this adjustment was insufficient.

Concerning whether the house lot was within the Zone A floodplain, the board finds the evidence suggests that the house lot, and thus the house, was not located within the Zone A floodplain. The best evidence on this point was the FEMA field survey that did not show the house as being within the Zone A floodplain.

The board also does not find the Taxpayers' evidence concerning the banks' responses to be conclusive that no bank would lend on this Property. While it is true that additional steps need to be taken to obtain a loan on this Property, the Taxpayers did not show that the \$20,600 adjustment would not have compensated any prospective owner for the additional burden. We conclude the Taxpayers did not make a sufficient effort to show that financing would not be available.

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. A motion for rehearing, reconsideration or clarification (collectively "rehearing motion")

of this decision must be filed within thirty (30) days of the Page 4  
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clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request.

RSA 541:4; TAX 201.37(b). A rehearing 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 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William E. and Ingrid Byrd, Taxpayers; and Chairman, Selectmen of Candia.

Dated: April 4, 1995

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Valerie B. Lanigan, Clerk

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**REHEARING ORDER**

This order relates to the "Taxpayers'" rehearing motion, which is denied for failure to state any "good reason" to grant. See RSA 541:3.

With reference to the Taxpayers' numbered paragraphs in the motion, the board makes the following responses.

1.) The board reviewed the total dollar amount of the adjustment due to floodplain. The 20% adjustment, resulting in a \$20,600 reduction, was accurate for the total ad valorem assessment, but it was not accurate in terms of the actual assessment that included land both in and not in current use. The 20% adjustment in the actual assessment was less than \$20,600, but the board was unable to determine where the Taxpayers obtained their \$8,000 figure. Nonetheless, even if the adjustment was only \$8,000 on the not-in-current use area, the board's original statement in the decision stands -- the Taxpayers did not show the adjustment that was given was inadequate. Obviously, there was an issue concerning the effect of the Property's proximity to the floodplain. The Town made an adjustment for this factor, and the Taxpayers did not show that adjustment, whatever its ultimate number, was insufficient.

2.) The board was aware of the two conflicting flood maps, and we chose the most recent 1983 field survey, which did not show the house being within the floodplain. The two maps -- the Taxpayers' and the Town's -- at a minimum, were inconclusive as to whether the Taxpayers' house was actually located in the floodplain. As we stated in our opinion, "the evidence suggests that the house lot, and thus the house, was not located in the Zone A floodplain." Decision

at 3 (emphasis added). The Taxpayers have the burden of proof, and they did not carry the burden of proof on this issue. Additionally, as we stated in the decision, and in paragraph 1 above, even if the property was located in the floodplain, the Taxpayers did not present sufficient evidence to show either what the Property was worth or that the Town's adjustment for the floodplain was inadequate.

3.) Because all properties are unique and require individual adjustments, the board did not find the Taxpayers' evidence of disproportionality persuasive.

The board, in denying the motion, again reiterates that the Taxpayers did not carry their burden to prove overassessment. Specifically, they did not show what the Property was worth and how the assessment was excessive compared to the Property's value. The Taxpayers also did not show how the Town's assessment did not adequately address the floodplain problem.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

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**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William E. and Ingrid Byrd, Taxpayers; and Chairman, Selectmen of Candia.

Dated: May 25, 1995

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Valerie B. Lanigan, Clerk

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