

Laurel and Francis A. Bolton, Jr.

v.

Town of Weare

Docket No.: 12066-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$329,037 on a 106.90-acre lot with a house (the Property). Approximately, 102.5 acres of the Property were in current use. At the hearing, the Town stated the assessment should be further adjusted to \$329,037 due to a revision in the current-use assessment. The Taxpayers also own, but did not appeal, two other lots in the Town with a combined, current-use assessment of \$2,093. For the reasons stated below, the appeal for abatement is denied, except the board accepts the final adjusted assessment of \$329,037.

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) the Colburn property, an abutting property, has a junkyard and piggery both of which adversely impacted value, requiring a reduction in the assessment; and
- (2) the assessment should have been reduced by 30% or more, resulting in a \$240,000 assessment.

The Taxpayers also discussed their disagreements with the Town's presentation.

The Town argued the assessment was proper because:

- (1) the Property did not warrant any economic depreciation because:
 - a) the Colburn junk area and piggery are distant from the Taxpayers' house;
 - b) the Colburn junk area does not affect the Taxpayers' industrial area's value because of a ridge and the Property's industrial use; and
 - c) sales in the area did not show devaluation; and
- (2) the Town reviewed the Property and investigated the Taxpayers' concerns and adjusted the assessment as warranted.

Board's Rulings

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

While the Taxpayers raised many arguments, the Taxpayers did not present any credible evidence of the Property's fair market value or how that value had been adversely affected by the piggery or the junkyard. 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 Page 3
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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 only market information submitted by the Taxpayers was a December 1987 appraisal of \$515,000.

Piggery

Concerning the piggery, we again note the Taxpayers did not submit any evidence to show that the piggery adversely affected the Property's market value.

The Taxpayers attempted to show market effect by comparing the 1989 sales price (before piggery) to the 1993 price (after piggery) on map 203, lot 63, which is directly across the street from the Property. While the price did drop from \$96,800 in 1989 to \$75,000 in 1993, that drop cannot necessarily be attributed to the piggery. Rather, the drop appears to be due to the general market decline. Specifically, in 1990 the Town's equalization ratio was 1.01, but in 1993, the equalization ratio was 1.30, demonstrating a 22% drop in property values in the Town from 1990 to 1993. This 22% figure does not include any drop in value that may have occurred from 1989 to 1990 or from the early part of 1993 to the latter part of 1993. Even if the \$96,800 1989 sales price is reduced by the 22%, the resulting value is \$75,500, which is consistent with the market decline and thus the board could not attribute any of the decline to the piggery.

The board could not assume that the piggery affected the Property's market value because:

1) the house is, itself, in a pastoral setting;

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2) the house is approximately 750 feet from the piggery;

3) the Taxpayers admitted the smell at the house was limited to about 20 days

in the summer; and

4) there was insufficient evidence concerning whether the piggery adversely affected the industrial property.

Junkyard

Concerning the junkyard, the Taxpayers did not present market information about how the junkyard had adversely affected values. The home is sufficiently distant from the junkyard that the board cannot conclude it would adversely affect that portion of the Property. In terms of the industrial portion, the board could not assume the junkyard affected that value because the industrial property was being used for industrial uses and because the topography shielded most of the junkyard from this part of the Property.

We also think the Town took an adequate opportunity to review the Taxpayers' concerns and to make a determination as to whether the concerns warranted an adjustment in the assessment. The Town did make some adjustments to reflect some of the Taxpayers' earlier concerns, and we find their efforts demonstrate a good-faith attempt to review and deal with these Taxpayers.

The board, however, orders the Town to reduce the assessment to the \$329,037 adjusted assessment.

If the taxes have been paid, the amount paid on the value in excess of \$329,037 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, the Town shall also refund any overpayment for 1992, 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the Page 5 Bolton v. Town of Weare Docket No.: 12066-91PT

ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the 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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Laurel and Francis A. Bolton, Jr., Taxpayers; and Chairman, Selectmen of Weare.

Dated: March 31, 1995

Valerie B. Lanigan, Clerk

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