

Lawrence S. and Jennie L. Bond

v.

Town of Newfields

Docket No.: 12359-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$217,200 (land \$131,100; buildings \$86,100) on a 2-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 carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the river is not suitable for swimming and smells of sewerage;
- (2) the river frontage is not usable without first obtaining permits and building a boat launch;

(3) Route 108 is busy and hazardous;

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(4) the land is hilly and the lot's shape is irregular;

(5) the Property is in a commercial zone, yet there is no business on the Property;

(6) there is no access to Town water, sewerage or fire hydrants;

(7) a similar, riverfront lot in a commercial zone had only a \$45,000 land assessment, and another similar lot with more road frontage than the Property had only a \$53,600 land assessment; and

(8) Route 108 in front of the Property is being rerouted to a new location and will leave the Property at a dead end.

The Town argued the assessment was proper because:

(1) the Property was assessed the same as other riverfront lots;

(2) the Property's assessment is well within the range of comparable properties and assessed with the same \$500, per-front-foot values and 1.50 river-influence factors;

(3) there is seldom an odor from the river, and sales do not show that values have declined because of any river odor;

(4) the Property is in a commercial zone, but was assessed at residential rates; and

(5) the Taxpayers failed to prove overassessment.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was proportional. We also find the Town supported the Property's assessment.

The board finds the adjustments made to the land calculations by the Town reasonably reflect some of the issues raised by the Taxpayers.

The Town indicated that the sales did not show any decline in value due to the infrequent odor from the river. It is the board's experience that the market value of the Property is generally positively influenced by being located on a river. (The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Guimm, ___ N.H. ___ (December 17, 1993) (administrative board may use expertise and experience to evaluate evidence).

The Taxpayers did not present any credible evidence of the Property's fair market value. 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 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 Taxpayers did not present evidence to show that either the topography adjustments or the 1.5 river-influence factor were not reasonable based on market evidence.

Further, the commercial zoning and potential of the Property was not assessed by the Town because the land in the neighborhood is generally used

residentially and sales have not indicated the market is recognizing the commercial potential due to zoning.

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The Taxpayers also argued the Property did not have access to the Town's utilities. Lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

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

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 Lawrence S. and Jennie L. Bond, Taxpayers; and Chairman, Selectmen of Newfields.

Dated: April 21, 1991

Lynn M. Wheeler, Deputy Clerk

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