

Francis J. and Deborah P. Dineen

v.

Town of Jefferson

Docket No.: 12360-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$208,000 (land \$75,300; buildings \$132,700) on a 7.5-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 Property has only a right-of-way for access and no road frontage;
- (2) the house is of average construction;
- (3) the Property sits near a busy and dangerous intersection;

(4) the Town assessed the Property with a fireplace when there was only a woodstove;

(5) the assessment increased \$3,100 because of tiling and wood flooring, yet only 22% of the house has either;

(6) comparable properties with the same views and road frontage as the Property had lower land assessments;

(7) the assessment increased, yet there were no changes made to the Property; and

(8) abutting properties detracted from the Property's value.

The Town argued the assessment was proper because:

(1) the Property has exceptional mountain views from the house deck, and a pond sits on the Property;

(2) the assessment increased to address the quality construction and views;

(3) the land value was based on sales that occurred before and during the revaluation, which were adjusted for topography, location, access and views;

(4) the Property's access is level and the view factor was applied to the house site because the best view is from the deck;

(5) abutting properties are not so close to the Property as to detract from its value;

(6) the Property's access is 300 feet from the intersection; and

(7) comparable sales support the Property's assessment, e.g., a comparable property sold in April, 1991 for \$252,000.

Board's Rulings

Based on the evidence, the board denies the appeal. This denial is based on three major factors:

(1) the Taxpayers' failure to provide sufficient evidence of the Property's

value;

- (2) the Town's evidence concerning other sales with a view; and
- (3) the board's judgment of the Property's value.

Concerning the Taxpayers' burden, the board finds the Taxpayers did not submit sufficient information concerning the Property's value as a whole. The photographic evidence indicated that this was a very nice Property. The Property includes a pond, which was well landscaped, a fair size tract of land and a quality house. The Taxpayers chose to focus only on the view factor, but they failed to provide sufficient evidence on the Property as a whole. 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's two sales did establish a premium was paid for views, and while we have some questions about whether the Town consistently and correctly applied a view factor, the Taxpayers did not show that in assessing the Property the view factor used resulted in a disproportional assessment.

Finally, this board is entitled to rely upon its own judgment. As described above, given the board's review of this Property, the assessment appeared fair and reasonable.

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

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Francis J. and Deborah P. Dineen, Taxpayers; and Chairman, Selectmen of Jefferson.

Dated: April 19, 1994

Lynn M. Wheeler, Deputy Clerk