

Charles J. and Sandra G. Creran

v.

Town of Pittsburg

Docket No.: 12405-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$202,000 (land \$82,400; buildings \$119,600) on a .96-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's slope to the lake results in the view being 60 to 70 feet of mudflats and rocks, depending on the lake's water level;
- (2) a July, 1991 appraisal estimated a \$167,000 value;

- (3) properties are not selling for anywhere near their assessed values, i.e., a house assessed at \$495,000 sold for \$295,000 and another house has been listed for sale for over two years at \$129,000 and is assessed at \$176,000;
- (4) the Town did not use the same methodology throughout the Town because different adjusted base rates were used and different condition factors were applied to properties with the same view;
- (5) the appraisal had a typographical error on the acreage amount, but the appraisal figure was based on .959 acres; and
- (6) the assessment should be \$167,000.

The Town argued the assessment was proper because:

- (1) the Taxpayers' sale information was wrong, i.e., the \$295,000 sale never occurred, but another house assessed at \$297,000 did sell for \$250,000;
- (2) the Taxpayers' appraisal was flawed because only two of the five comparable properties were in the Town, and the appraiser failed to make adjustments for differences in properties;
- (3) the appraiser's \$194,270, cost-approach value was within the range of the Property's assessment;
- (4) the appraiser used the wrong acreage for the Property, and if he had used the correct acreage, his value estimate would probably have matched the assessment;
- (5) bank appraisals are typically lower than appraisals done for taxes;
- (6) the same methodology was used for all lakefront properties;
- (7) the Property has excellent views of the lake and the mountains and 163 feet of frontage on the lake; and
- (8) sales supported the Property's assessment.

Creran v. Town of Pittsburg

Docket No.: 12405-91PT

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The board does not accept the Taxpayers' appraisal because the board finds the properties used in the appraisal as comparables were not actually comparables. Comparables two and three were not waterfront or water-access properties, and comparable five was on a smaller lake. Additionally, all comparables had to be adjusted by over 25%. Finally, the appraiser did not present any information nor make any adjustments for the Property's waterfrontage. This Property's 163 feet of frontage affords significant views and substantial waterfrontage, even if some of that frontage is not good quality.

Having rejected the Taxpayers' appraisal, there was insufficient other evidence to demonstrate overassessment. Finally, based on the board's knowledge and experience, the assessment does not appear to be excessive.

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)

Page 4

Creran v. Town of Pittsburg

Docket No.: 12405-91PT

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

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 Charles J. and Sandra G. Creran, Taxpayers; and Chairman, Selectmen of Pittsburg.

Dated: May 23, 1994

Lynn M. Wheeler, Deputy Clerk

0008