

Paul A. Simoneau

v.

Town of Hudson

Docket No.: 12483-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$196,000 (land \$73,100; buildings \$122,900) on a 10.219-acre lot with a house (the Property). The Taxpayer also owns, but did not appeal, three other lots in the Town with a combined, \$206,250 assessment. The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

(1) the Property has ledge, more than half the Property is wetlands, and a

duck pond on the Property is hazardous to children;

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(2) the Property's access road -- Trigate Road -- is a dirt road and will never be improved by the Town;

(3) a February 10, 1992 appraisal estimated a \$50,000 value for the Property;

(4) the Property received subdivision approval in May, 1991 to make two separate lots;

(5) all the Taxpayer's properties in the Town are intended to make a homestead so his children can build homes;

(6) a State circumferential highway will surround the Property and have a negative impact on its value; and

(7) the Town approved a plan to privatize Homestead Lane, which negatively affects the Property.

The Town argued the assessment was proper because:

(1) although the Taxpayer states 50% of his Property is wetlands and unusable, a subdivision was approved to make two buildable lots;

(2) the hazardous duck pond was constructed by the Taxpayer;

(3) the assessment considered the wetlands;

(4) the State circumferential highway, which is still not built, has been in planning for 20 years and does not affect the Property's value as yet;

(5) privatizing Homestead Lane will not adversely affect the Property;

(6) Trigate Road does not negatively affect the Property's value -- it is a Town-maintained dirt road containing \$200,000+ homes;

(7) the Taxpayer's appraisal is flawed since he adjusted the comparables'

assessments and not their sales prices; and

(8) similar properties support the Property's assessment.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property's assessment was disproportional. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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 Taxpayer's appraisal was not an appraisal, but merely a comparison of assessments of his other lots in the subdivision. The Taxpayer argued that the Property was subject to wetlands and the board finds the Town made an appropriate adjustment to reflect the wet area. Further, the Property had the potential for subdivision and the market would have recognized that as a possibility on April 1, 1991. The Taxpayer introduced no market evidence as to the effect, if any, the future circumferential highway had on the Property on April 1, 1991. The Town submitted evidence to show 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).

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

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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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Paul A. Simoneau, Taxpayer; and Chairman, Selectmen of Hudson.

Dated: April 12, 1994

Lynn M. Wheeler, Deputy Clerk

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