Wayne M. Wenzel

v.

Town of Freedom

Docket No.: 12747-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of $167,000 (land, $115,700; building, $51,300) on .82 acres with building (the Property). 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 granted.

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 carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

1) the Property's assessment should be reduced due to extreme flooding;

2) the land dimensions are no longer accurate due to the flooding and erosion; and

3) the road is not passable at times due to the flooding.

The Town did not file a brief with the board and therefore was placed in final default.

Board Findings

Based on the evidence, including the board's prior decisions in Wenzel v. Town of Freedom, Docket No.: 9859-90PT and Friedman v. Town of Freedom, Docket No.: 9576-90PT, the board finds the proper assessment should be $133,600, which represents a 20% reduction due to the flooding issue.

Based on the information provided by the Taxpayer, this Property is located in the same vicinity as the Friedman and Roger Wenzel properties, which were reduced in the board's prior decisions. Moreover, apparently the Town was thinking of adjusting properties that were subject to flooding, but given the number of properties placed within the 100-year flood area, the Town decided not to grant abatements. The Town's approach cannot be accepted. The Town should have determined which properties were adversely affected by seasonal flooding to the extent these properties were. Simply because a property is within a 100-year flood plain may not require a 20% reduction. However, if a property, in addition to being in the 100-year flood zone, is subject to and has a history of seasonal flooding, an adjustment is probably appropriate. Certainly, any prospective purchaser of the property would pay less for a property that has a flooding history.

The board incorporates herein, its decision in Wenzel v. Town Freedom, Docket No.: 9859-90PT (copy attached).

The Taxpayer did not present sufficient information to warrant reducing the land size.

If the taxes have been paid, the amount paid on the value in excess

of $133,600 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 1993 and 1994. Until the Town undergoes a general reassessment, the Town shall use the 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 "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, <u>not the date this decision is received</u>. 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

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Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Wayne M. Wenzel, Taxpayer; and Chairman, Selectmen of Freedom.

Dated: December 23, 1994

Melanie J. Ekstrom, Deputy Clerk

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