

Kathleen Neskey

v.

Town of Pelham

Docket No.: 13039-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$168,100 with a current use "credit" of \$38,250, resulting in a taxable assessment of \$129,850 on a 44.73-acre lot with a house (the Property). The Taxpayer also owns but did not appeal several other properties in the Town. 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 her burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:
(1) the Town increased the assessment due to subdivision approval but the wetlands permit had not yet been issued and the lot had not yet been conveyed;

- (2) the entire five-acre lot was only worth \$20,000 because the lot required extensive site work for the driveway and because of ledge; and
- (3) the 5-acre lot was appraised twice in 1992 for \$35,000 and \$38,000.

The Town argued the assessment was proper because:

- (1) the subdivision approval increased the value;
- (2) the value was based on sales of other lots; and
- (3) the 5-acre lot was worth \$45,000.

Board's Rulings

Based on the evidence, the board finds the one acre not in current use (NICU) should have been assessed for \$4,485. Unfortunately, the board is unable to provide the total assessment because, we are not confident that we received the correct assessment-record card.

The board finds the Taxpayer was incorrect in asserting that the NICU acre should not have been increased in value simply because she had obtained subdivision approval. Assessments must be based on market value, see 75:1, and assessments must consider all factors that affect market value. Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975). Certainly the subdivision approval would have been a factor that increased the value of the subdivided lot even if some other permits were still required. Only one acre was NICU of the five total acres. The board will address only the value of the NICU acre. The Town asserted the five-acre lot was worth \$45,000, and the Taxpayer asserted the five-acre lot was worth between \$35,000 - \$38,000. The board finds the market value of the five-acre lot was \$38,000. This figure has been chosen because the Taxpayer presented sufficient evidence about the poor topography of this lot, including wet areas near the road and ledge on the

lot. Additionally, the lot, while subdivided, had not received all necessary approvals for development, e.g., wetlands permit. Thus, the five-acre lot had a \$38,000 value, which would equate to a \$22,420 assessment (\$38,000 value x .59 equalization ratio) or \$4,485 assessment per acre. The board concludes that the NICU acre should have been assessed at that \$4,485 figure. Generally, the Town is correct that the front acre has substantially more value than the rear acres, but in this case, the Taxpayer convinced the board that the front acre could not be used for development due to the wetlands. The board recognizes it is engaging in a valuation fiction in using this per-acre value, but with part of the five-acre lot in current use, the board must attribute value to different locations on the Property. Obviously had all the Property been NICU, the board would simply look at the lot's value as a whole rather than apportioning it based on location on the lot.

If the taxes have been paid, the amount paid on the value in excess of the assessment using the \$4,485 value for the NICU acre 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, unless the Town has undergone a general reassessment, 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. Note: the refund paragraph refers to subsequent years, but the Town is not obligated to use the board's assessment for any year where additional approvals had been obtained and the lot had been actually deeded.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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 Kathleen Neskey, Taxpayer; and Chairman, Selectmen of Pelham.

Dated: November 30, 1995

Valerie B. Lanigan, Clerk

0006