

Gerald Chisholm

v.

Town of Londonderry

Docket No.: 15058-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" abated 1994 assessment of \$146,300 on 3.7 acres with buildings (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 denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the 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.

The Taxpayer argued the assessment was excessive because:

- 1) the assessment apparently assumed the lot could be subdivided but the lot cannot be subdivided;
- 2) the Town reduced to 20% the board's ordered (1990) 25% reduction for the Property's location in a superfund site;

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3) the assessment card included errors (listed on pages 2 and 3 of Taxpayers' brief); and

4) an April 1, 1994 fair market value would be \$94,688 based on accurate assessing procedures.

The Taxpayer also filed a rebuttal to the Town's brief, which the board has read.

The Town argued the assessment was proper because:

- 1) it was determined by the town-wide revaluation and review;
- 2) the Taxpayer's issues concerning depreciation, outbuildings and insulation were addressed, resulting in a \$5,400 reduction;
- 2) the Taxpayer was given a 20% adjustment due to the proximity of the superfund site;
- 3) the Taxpayer's front-foot value (50% reduction for restrictions) properly reflected the contribution to total land value provided by the front footage;
- 4) Exhibit D represented the best evidence of value; and
- 5) Taxpayer's assessment was fair and equitable, and no further adjustments are required.

#### **BOARD FINDINGS**

Based on the evidence, the board finds the Taxpayer did not show overassessment.

Under RSA 75:1, all assessments must be based on market information. The board, however, received no information from the Taxpayer concerning the Property's market value. Thus, the board was unable to determine that the assessment was excessive.

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The Taxpayer's main argument was that the Town failed to follow the board's April 22, 1993 decisions that addressed tax year 1990. In those cases, the board determined a -25% adjustment was warranted due to the properties' location within the "Holton Circle Groundwater Contamination Site." The Taxpayer did not submit any information concerning the status of the contamination in tax year 1994 and whether that issue had any effect on the Property's value in 1994. The board, therefore, reviewed the files in the following cases, and the board takes official notice of those files: Wicker v. Londonderry, Docket No.: 10004-90; Wood v. Londonderry, Docket No.: 10005-90; Iannacone v. Londonderry, Docket No.: 10006-90; and Boettcher v. Londonderry, Docket No.: 10007-90. After reviewing these files in connection with this 1994 appeal, the board concludes the Taxpayer did not show the Town's 20% adjustment was insufficient. Specifically, the Taxpayer did not present any sales to show the effect the contamination issue had on values, the Taxpayer failed to update the board concerning the status of the contamination since the board's prior decisions, and the Taxpayer failed to show the Town's adjustment was not reasonable. In this appeal, it was simply not enough for the Taxpayer to point to the board's prior decisions. Those decisions were made several years ago and were based on the information presented. Given the dearth of market information and given the Town's failure to make any adjustment, the board, in the prior decisions, made an adjustment based solely on its judgement.

Pursuant to RSA 75:8, the Town should continue to review the assessments

on properties in this location. If the market information provides any indication of how, or if, the contamination issue is affecting values, the Town

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shall make adjustments based on that research. This research could include a conclusion that the availability of water and the lapse of time have diminished any adverse impact the contamination has on values.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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. This, 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. 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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

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**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gerald Chisholm, Taxpayer; and Chairman, Board of Selectmen.

Dated: September 16, 1996

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Valerie B. Lanigan, Clerk

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