

Robert and Lois Boettcher

v.

Town of Londonderry

Docket No.: 15085-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 abated assessment of \$121,100 (land \$25,000; building \$96,100) on 1.2 acres with a home (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.

The Taxpayers argued the assessment was excessive because:

- 1) it increased after the 1994 revaluation; and
- 2) a further reduction of 5% should have been given as determined by the "BTLA" for the tax year 1990.

The Town argued the assessment was proper because:

- 1) the Town's revaluation was effective April 1, 1994;
- 2) to address the Taxpayers' neighborhood's proximity to the EPA site, a 20% economic depreciation was given to all properties;
- 3) Exhibit C demonstrated the adjustments were sufficient; and
- 4) the assessment was reasonable and below presently perceived market value.

Board Findings

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

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

The Taxpayers' 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 Taxpayers 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 Taxpayers did not show the Town's 20%

adjustment was insufficient. Specifically, Page 3
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the Taxpayers did not present any sales to show the effect the contamination issue had on values, the Taxpayers failed to update the board concerning the status of the contamination since the board's prior decisions, and the Taxpayers 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 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 Page 4 Boettcher v. Town of Londonderry Docket no.: 15085-94PT

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Robert and Lois Boettcher, Taxpayers; and Chairman, Board of Selectmen.

Date: September 16, 1996

Valerie B. Lanigan, Clerk