

Peter and Shauna Kondrat

v.

Town of Conway

Docket No.: 15229-94PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$214,300 on a 10.17-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, a vacant lot in the Town with a \$15,900 assessment. 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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property's remote location has a negative impact on its marketability;

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(2) the Town assured the Taxpayers that the road was Class V, yet after purchasing the Property, the Taxpayers found the Town changed the road to a Class VI and the Taxpayers had to expend money to improve the road to a Class V before they could obtain a building permit to construct the home;

(3) the Property can only be accessed by driving four miles through the Town of Eaton;

(4) part of the road frontage is very hilly and the Taxpayers had to purchase a 4-wheel drive vehicle to get to the Property because of the road;

(5) there were errors on the assessment record card, e.g., the Property has only 10.17 acres and not 14.45 acres, there are only 3 bedrooms not 4, and the house is 2,700 square feet not 3,200;

(6) the Property does not have a panoramic view, only a western view in the winter months;

(7) the Property's April 1, 1994, fair market value was \$179,000; and

(8) comparable properties had lower assessments.

As part of this appeal, the Town reinspected the Property. The Town made an upward adjustment to the land value because the original assessment failed to recognize the Property's panoramic views. Additionally, downward adjustments were made to address the nonwood siding, measurement errors and the Property's remote location. These revisions indicate the proper assessment should have been \$216,100.

The Town argued the assessment was proper because:

(1) the value was based on standards established during the 1994 revaluation;

(2) the 3,200 square-foot living area is based on exterior measurements, and this method was used throughout the Town;

- (3) the road was upgraded specifically for the Taxpayers;
- (4) the assessment was based on 10.17 acres and not 14.45, which is the size of the Taxpayers' abutting vacant lot;
- (5) the Taxpayers' comparables were not comparable in size, price per acre, living area, or age;
- (6) comparable sale prices supported the Property's assessment; and
- (7) the Town appraiser's estimated a \$216,200 value.

**Board's Rulings**

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

1) The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers 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 assessment 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 lack of any market data was surprising because one taxpayer is a realtor and the other taxpayer is a builder. Certainly, in their businesses, the Taxpayers had access to market information, including sales and construction costs.

2) While the Taxpayers raised some questions about the Town's assessment calculation, the Taxpayers, having failed to provide any market analysis, failed to show that the Town's calculations resulted in overassessment.

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"Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

3) The Town reviewed the assessment, reinspected the Property and corrected the assessment-record card. The Town stated the correct assessment should have been \$216,100. The Town's actions also addressed some of the Taxpayers' asserted errors in the assessment. To the extent the Town did not make corrections, the Town explained why its assessment card correctly assessed the Property. For example, the Town explained that its building measurements were correct based on exterior measurements of the building. The Town also explained that this method of measurement was used throughout the Town.

4) The Town's assessment and review reflected the Property's location. While the location may be remote, the Property also enjoys some views and privacy. The Town recognized the remote location by adjusting the land value and by adjusting the CDU factor.

5) The Town provided some good comparable sales information, which indicated that the assessment was not excessive.

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:

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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. 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

\_\_\_\_\_  
Paul B. Franklin, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Peter and Shauna Kondrat, Taxpayers; and Chairman, Selectmen of Conway.

Date: September 16, 1996

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Valerie B. Lanigan, Clerk

**Peter and Shauna Kondrat**

**v.**

**Town of Conway**

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**ORDER**

This order responds to the "Taxpayers'" rehearing motion, which is denied. The motion did not demonstrate that the board erred in its decision, and thus, the motion failed to show any "good reason" to grant a rehearing. See RSA 541:3.

The board's decision adequately responded to the Taxpayers' rehearing arguments. The board, however, wanted to specifically address the Taxpayers' rehearing arguments that were based on Appeal of Town of Sunapee, 126 N.H. 214 (1985), and Vickery Realty Company Trust v. City of Nashua, 116 N.H. 536 (1976). First, as stated in the decision, the Taxpayers did not show disproportional assessment. Second, the New Hampshire Supreme Court has issued two important decisions that refute the Taxpayers' asserted reliance on Sunapee and Vickery. In Appeal of City of Nashua, 138 N.H. 261, 263 (1994), the court stated: "to determine the appropriate assessed value for a property, the board must make specific findings regarding the [appealed] property's market value and the equalization ratio by which to [adjust] the market value to an assessed value." In Society Hill v. Merrimack Condominium Association v. Town of Merrimack, 139 N.H. 253, 254-55 (1994), the court restated the taxpayer's burden to prove the

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appealed property's market value. The Taxpayers failed to prove the property's market value. The court also stated absent other proof from the parties, the revenue department's ratio may be used to represent the general level of assessment. See Nashua 138 N.H. at 265-67. The Taxpayers failed to prove the property's value or an alternative ratio, and thus, no abatement was warranted.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

**Certification**

I certify that copies of the within Order have this date been mailed, postage prepaid, to Peter and Shauna Kondrat, Taxpayers; and Chairman, Selectmen of Conway.

Date: October 31, 1996

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Valerie B. Lanigan, Clerk

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