

Frank M. Purvis

v.

Town of Barrington

Docket No.: 15695-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessments of:

\$57,700 (land \$23,900; buildings \$33,800) on Lot 43, a .86-acre lot with a mobile home, two garages and two sheds; and

\$28,900 (land \$18,900; buildings \$10,000) on Lot 43A, a .92-acre lot with a mobile home (the Properties).

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 abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or were unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality,

the Taxpayer must show that the Property's assessments were higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

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The Taxpayer argued the assessments were excessive because:

- (1) the Properties are close to a hazardous waste superfund site, which has a negative impact on the Properties' values as will potential lawsuits and future efforts to clean the site;
- (2) abutting properties were abated to address the site location, but the Properties were not;
- (3) there are no liens on the Properties, yet banks will not consider the Properties as collateral due to the superfund site;
- (4) the groundwater cannot be used due to the site, resulting in additional expense to obtain Town water;
- (5) larger lots and comparable properties with newer buildings have lower assessments than the Properties;
- (6) the assessments may be based on inaccurate measurements and include \$100 for a shed that was removed; and
- (7) Lot 43 should be assessed \$35,500 and Lot 43A should be assessed \$20,800 based on comparable properties' assessments.

The Town argued the assessments were proper because:

- (1) no recent sales have occurred to indicate the superfund site had a negative impact on the market;

(2) only six properties were directly affected by the superfund site, and each received a 15% adjustment;

(3) the Taxpayer failed to provide any evidence that banks would not consider the Properties as collateral;

(4) the comparables across from and abutting the Properties did not receive an adjustment due to the superfund site, and the Properties were assessed consistently with the abutters;

(5) the Properties cannot use the groundwater, but there is a common well for the Properties and the abutters;

(6) a vacant lot near the superfund site sold for its assessed value and was then improved with a new house and resold; and

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(7) the Taxpayer never provided any surveys to correct the measurements nor did he notify the Town that the shed was removed.

BOARD'S RULINGS

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

As stated earlier, the Taxpayer has the burden to show the assessments were excessive. While the Taxpayer raised the contamination issue, the Taxpayer did not sufficiently show that it affected value. The board is unable to simply rely on conclusory statements from the Taxpayer especially when the Town seems to have attempted to fairly assess the Properties. For example, the Taxpayer did not supply sufficient information concerning the superfund site, the extent of the contamination and the status of the clean up. Second, the Taxpayer did not submit sufficient information to support the assertion that banks would not lend money against the Properties. We also

note that the Taxpayer placed a manufactured housing on Lot 43A, which at least raised the question about whether the contamination issue is as substantial as the Taxpayer indicated. Finally, the Taxpayer did not submit any market information to support lowering the assessments.

Concerning the \$100 shed assessment on Lot 43, the board recommends the Town remove that from the assessment-record card. The board is not recommending an abatement because the board focuses on a property's value as a whole, and the Taxpayer did not show that the value as a whole was in error. "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. 214, 217 (1985), quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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

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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. 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Frank M. Purvis, Taxpayer; and Chairman, Selectmen of Barrington.

Date: April 8, 1997

Valerie B. Lanigan, Clerk

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ORDER

This order responds to the "Taxpayer's" 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.

This case raised important issues, but the Taxpayer had the burden of proof and did not carry it.

To appeal this matter, an appeal must be filed with the supreme court within thirty (30) days of the clerk's date below. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Douglas S. Ricard, Member

Certification

I certify that copies of the within Order have this date been mailed, postage prepaid, to Frank M. Purvis, Taxpayer; and Chairman, Selectmen of Barrington.

Date: May 23, 1997

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Valerie B. Lanigan, Clerk