

Aram Jeknavorian

v.

Town of Pelham

Docket No.: 15723-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 adjusted assessment of \$80,400 (land \$19,850; buildings \$60,550) on a 2.10-acre lot with a house (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 was 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 assessment was higher than the general level of assessment in the municipality. Id. The Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) the Property abuts a junkyard, and the buffer between the Property and the junkyard is unsightly due to uprooted trees and boulders;
- (2) the Property is located on a high water table, resulting in basement flooding, water damage, and limited use of the basement even after incurring the cost to install drainage systems;
- (3) the junkyard is nonconforming (in a residential zone) and hazardous as cited in Lachapelle v. Goffstown, 107 N.H. 485 (1967);
- (4) Norwood Real Estate stated the abutting junkyard had a negative impact on the Property's value;
- (5) in 1975, the board of taxation stated the economic obsolescence factor should be 25%, yet the Town changed the board's recommendation; and
- (6) the Town's adjustment failed to adequately address the negative impact on the Property because of the high water table and the abutting junkyard.

The Town argued the assessment was proper because:

- (1) the junkyard is not visible from the Property;
- (2) the assessment was reduced by 10% because of the junkyard;
- (3) the Property's wetness was addressed with a 10% depreciation to the land;
- (4) the Taxpayer's realtor's statement was not supported by market data;
- (5) the Property was rented for \$1,000 per month;
- (6) comparable assessments supported the Property's assessment; and
- (7) the board's 1975 adjustment was changed during the Town's 1982 revaluation.

Board's Rulings

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

Property was overassessed for the following reasons.

1) The Taxpayer did not present any credible evidence of the Property's fair market value. To carry his burden, the Taxpayer 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.

2) The board is entitled to give its prior decision whatever weight the board deems appropriate. Given the age of the prior decision -- 1975, the board gives the prior decision no weight.

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3) The Town reviewed the assessment and inspected the Property with the Taxpayer. This review resulted in adjustments to the land assessment. The original assessment already included a -10% adjustment to the land and to the building for the proximity of the junkyard. This 10% adjustment reduced the assessment by approximately \$7,360, which reflects a market adjustment of approximately \$12,100 ($\$7,360 \div .61$ equalization ratio). While the Taxpayer presented a realtor's letter stating the junkyard would adversely affect the property's value, the Taxpayer did not submit anything to indicate what adjustment would be appropriate.

4) The Town adequately responded to the Taxpayer's arguments.

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.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Aram Jeknavorian, Taxpayer; and Chairman, Selectmen of Pelham.

Date: January 15, 1997

Valerie B. Lanigan, Clerk

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