

S.B. Cheney Corporation

v.

Town of Conway

Docket No.: 15730-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment on the following ten house lots (the Lots).

Map 019/Lot 101 \$40,100
Map 019/Lot 106 37,600
Map 019/Lot 116 42,600
Map 019/Lot 123 42,600
Map 019/Lot 124 42,600
Map 019/Lot 125 42,600
Map 019/Lot 126 42,600
Map 019/Lot 130 42,600
Map 019/Lot 131 42,600
Map 019/Lot 132 42,600

The Taxpayer also owns, but did not appeal, thirteen other lots in the Town. 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 admitted individual lots were worth the equalized assessments of \$39,200 to \$44,400. The Taxpayer even stated the individual lots were worth \$45,000 to \$50,000. However, the Taxpayer claimed it was entitled to a discount because the prior assessor had given the prior owner a discount and because of the time required to sell the Lots.

The Town asserted the assessments were proper because the assessments accurately reflected the Lots' values, and the Taxpayer was not entitled to any discount simply because it owned several lots. The Town submitted a memorandum on its position, which was reviewed by the board. The Town's written arguments are incorporated here.

Board's Rulings

Based on the evidence, the board finds the Taxpayer did not show the Lots were overassessed. This case has been decided strictly on the Taxpayer's failure to carry its burden of proof, and the board will not engage in lengthy analysis concerning the validity of the so-called "developer's discount."

Assessments must be based on market value. See RSA 75:1. Here, the Taxpayer admitted the Lots were worth at least the equalized value if not somewhat higher. Additionally, the Taxpayer stated as far as these Lots were concerned, the Taxpayer did not have any further conditions to meet or development costs to incur to sell the Lots at retail. This is in contrast to the Taxpayer's thirteen other lots, which will require additional development to sell at retail.

Based on the facts in this case and the arguments presented to the board, the board finds the Taxpayer did not show the Properties were overassessed. We find unpersuasive the Taxpayer's argument that the Town is obligated to carry the developer's discount forward simply because of the Town's past practices. Assessments must be based on market value and not simply on a municipality's past practices that may or may not have been correct. For instance, the developer's

discount may have been warranted when the developer still had outstanding conditions or development work that may have affected the Lots' highest and best use and the Lots' market value. However, the Taxpayer did not show a discount was still warranted.

A motion for rehearing, reconsideration or clarification (collectively "rehearing 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 rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing 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

Douglas S. Ricard, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Steven B. Cheney, Representative for the Taxpayer; and Chairman, Board of Selectmen of Conway.

Date: November 25, 1996

Valerie B. Lanigan, Clerk

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