

John D. Koob

v.

Town of Tamworth

Docket No.: 15886-94PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1994 assessment on a 47.6-acre lot with a cottage (the Property). 26 acres were assessed in current use and 21.6 acres were assessed at ad valorem value. The board was unable to determine based on the documents submitted the total assessment for the Property because the current-use assessment was not calculated or recorded on any of the submitted assessment-record cards. However, the parties' arguments focused on the 21.6 acres of land not in current (NICU) use which was assessed for \$130,400. The cottage was assessed for \$2,000 with the notation that it had "utility-shed value". The Taxpayer and the Town filed an agreement as to the assessment of the other four properties owned by the Taxpayer in town. 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,

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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) comparable lots had lower assessments;
- (2) comparable lots sold for an average, \$45,191 sale price, yet the Property's land NICU was assessed at \$130,400; and
- (3) the Property's land NICU should be assessed at \$60,000.

The Town argued the assessment was proper because:

- (1) the Property's assessment was arrived at using standards established for the 1994 revaluation;
- (2) of the Property's land NICU, the Town assessed a portion as frontage and the balance as rear acreage;
- (3) the Property's frontage contains level land with mature forest growth and has subdivision potential;
- (4) comparable lots in the Property's location with similar frontage support the Property's assessment;
- (5) the Taxpayer's comparables are inferior in location and land quality; and

(6) the Taxpayer's value conclusion is flawed because it fails to adequately consider the differences in quality, location, frontage or topography.

BOARD'S RULINGS

The board finds that the Taxpayer did not carry his burden because the sales information and assessment comparables submitted were not analyzed in such a fashion to account for differences in the physical features of the land such as frontage, topography, location, etc. The Town submitted reasonable documentation showing there were differences in the amount of frontage, the configuration of the lots and the topography to indicate some adjustment of the Taxpayer's sales would be needed for them to be comparable to the Property.

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Further, it is also difficult to do a comparison between the portion of the Property (21.6 acres) NICU and sales of entire tracts of land. The area of land NICU is all the frontage plus some backland and comprises the most valuable portion of the Property's entire lot. Therefore, making comparisons on a front-foot and a per-acre bases results in averaging less valuable rear portions of sale lots and results in lower front-foot or per acre prices than is reasonably attributable to the higher value portion of the Property NICU.

Lastly, the Taxpayer's agent in her analysis of the sales to arrive at a price per acre applies a 122% factor. The board was unable to determine the basis or logic for this factor from the submitted evidence.

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

Paul B. Franklin, Chairman

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Nanci Stone-Hayes, Agent for John D. Koob, Taxpayer; Mary E. Pinkham-Langer, Agent for the Town of Tamworth; and Chairman, Selectmen of Tamworth.

Date: January 27, 1997

Valerie B. Lanigan, Clerk

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