

Gilbert E. Boisvert

v.

Town of Madison

Docket No.: 15949-95PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1995 adjusted assessment of \$102,900 (land \$76,300; buildings \$26,600) on a .9-acre lot with a single-family home (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or 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 actually consists of two lots and should have been assessed as such;

- (2) the road area had been assessed to the Taxpayer;
- (3) the small area near the beach should be assessed at \$800 per front foot;
- (4) the large area should be assessed at \$250 per front foot;
- (5) a reduction should be given for the septic easement on a portion of the Property; and

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- (6) the heavy traffic volume on Route 41 adversely affects the value of the Property.

The Town argued the assessment was proper because:

- (1) the road area had been considered through a 15% reduction in the market adjustment portion of the assessment-record card;
- (2) the traffic conditions were also considered, and the land assessment calculation reduced by 5% to reflect the high volume;
- (3) the septic easement was accounted for by a 15% reduction under the market adjustment heading on the assessment-record card; and
- (4) the assessment methodology correctly assessed the Property as one lot.

Board's Rulings

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

The Taxpayer testified there was an error in the assessment procedure. It was the Taxpayer's opinion that the Property should be divided into two parcels for assessment purposes with Route 41 being the dividing line. The Taxpayer argued that the area with the waterfrontage should be the only area assessed at the \$800 per front foot rate while the area on the west side of Route 41, without waterfrontage, should be at \$250 per front foot. The

Taxpayer, however, did testify that if he were to sell the Property he would sell both pieces together as the smaller piece would not be a viable lot by itself. The board concurs with this reasoning as it is the board's opinion that the highest and best use for the Property would be to combine both areas and to consider them as a single economic unit. The Town's assessment methodology was consistent with this conclusion.

Having concluded the Property should be viewed as one economic unit, we turn to whether the Taxpayer showed the Property's assessment was excessive. 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

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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. 214, 217-18 (1985). Because the Taxpayer did not present any market evidence, the Taxpayer failed to show the assessment was excessive.

Finally, we turn to the Taxpayer's other arguments concerning the assessment methodology.

The Town addressed the Taxpayer's argument concerning the septic easement through the 15% (.85) adjustment under the market adjustment heading on the assessment-record card. Similarly, the Town made adjustments to the land value for the area under Route 41 (15%) and the heavy traffic volume (5%). The combined 20% (.80) reduction is shown on the assessment-record card

under the market adjustment heading in the land section.

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.

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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 Gilbert E. Boisvert, Taxpayer; and Chairman, Selectmen of Madison.

Date: May 21, 1997

Valerie B. Lanigan, Clerk

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