

Pierre and Gertrude W. Martin

v.

Town of Amherst

Docket No.: 16166-95PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1995 assessment of \$289,800 (land \$121,700; buildings \$168,100) on a 47-acre lot (45 acres in current use; 2 acres NICU) with a single-family home (the Property). The Taxpayers also owned, but did not appeal, another property in the Town with a \$6,300 assessment. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers 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 Taxpayers must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. The Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- (1) the house lot is assessed too high compared to similar lots;
- (2) the Property has limited accessibility by a narrow, dirt road and there is no mail or school bus services to the Property; and
- (3) the Town's comparable assessments are located in a more exclusive development.

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The Town argued the assessment was proper because:

- (1) the Property is located on a private road (maintained by the Town) and is in an area being built up by higher priced homes;
- (2) Chestnut Hill Road is a very diversified area and has lower street prices in some sections;
- (3) the Taxpayers purchased an abutting 19.64 acre lot in September 1992 for \$143,000; and
- (4) comparable sales support the base price set on the Property.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove their assessment was disproportionate.

The Taxpayers focused their arguments on the two-acre site value of the area not in current use (NICU). The board, however, must view the Property in its entirety (at least the ad valorem value of the land NICU and buildings) to determine whether the assessment is proper. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The assessment of the two-acre site NICU and the buildings total \$276,965. The Taxpayers submitted no evidence as to the market value of their Property, only focused on comparison to other site assessments in the neighborhood and the deficiencies of Fellows Farm Road.

The board finds the indicated market value of \$282,617 ($\$276,965 \div .98$) by applying the Town's 1995 equalization ratio to the \$276,965 assessment is not unreasonable.

The board did not end its analysis here however. The board viewed the Property from the exterior and the neighborhood including all the assessments and sales of comparable properties submitted by the parties. Based on this view, the board finds the Town's use of base price for the two-acre site of \$115,000 is reasonable despite the problems with Fellows Farm Road. The board agrees with the Town that the lower site values north of the Property on Chestnut Hill Road are in a neighborhood of more diverse and generally comprised of lower quality homes. (The board does note, however, that the

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adjoining property, map 11, lot 7-1, which has a base site value of \$60,000 enjoys many of the same locational benefits the subject does and consequently may be underassessed; consequently this property is not a proper comparison to justify lowering the Taxpayers' Property).

The Taxpayers are correct in that many of the higher-lot-value properties are in self-contained developments that have significantly better quality roads servicing them. However, the road accessing a property is not the sole criteria affecting a property's value. The board noted on its view that the Taxpayers' two-acre site NICU enjoys privacy due to its location at the end of Fellows Farm Road and due to it being surrounded by open space owned by the Taxpayers. Further, the views from the two-acre site are certainly impressive and perhaps the most panoramic of any of the properties the board viewed. These amenities that positively affect the value of the

two-acre site offset the inconvenience caused by the maintenance issues of Fellows Farm Road.

Further, the sales of land in the Taxpayers' immediate neighborhood (even if not considering subdivision sales) also support the Town's higher site value. In particular, the Taxpayer purchased an adjoining 19.64 acre parcel in 1993 for \$143,000. This parcel is set back from Fellows Farm Road a significant distance and was accessed by only a 30 foot strip of land. Because of this property's limitation for development (limited to only one building site accessed by a long driveway), its purchase price reflects on the inherent desirability of land in this immediate neighborhood. Two other nearby sales (map 11, lot 11-4 and map 11, lot 11-3) also indicate that building sites with some excess land are bringing prices that support the Town's base site value \$115,000 for the Property.

Again, as the board indicated at the beginning of the decision, it reviewed the value of the Property's two-acre site with buildings and finds the Town's assessment of approximately \$277,000 is not unreasonable given its location, quality of improvements and quality of the neighborhood.

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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

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 Pierre and Gertrude W. Martin, Taxpayers; and Chairman, Selectmen of Amherst.

Dated: June 3, 1997

Valerie B. Lanigan, Clerk

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