

Irving and Eleanor Rhines

v.

Town of Tamworth

Docket No.: 17015-96PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$109,450 (land \$62,600; buildings \$46,850) on a 1.99-acre lot with a retail store (the Property). For the reasons stated below, the appeal for abatement is granted with a minor adjustment due to the Property's lack of water.

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, but the board concluded an adjustment was warranted for the lack of water.

The Taxpayers argued the assessment was excessive because:

(1) the assessment was higher than two other lots -- Roberts and Newell, which the Taxpayers asserted were superior lots;

(2) the lot drops off in the back;

(3) the Property has a septic system but no well; and

(4) when asked by the board, the Taxpayers estimated a value of \$80,000 for the Property.

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The Town argued the assessment was proper because:

(1) the assessment was based on a 1993 department of revenue revaluation;

(2) after the Taxpayers filed for an abatement, the assessment was reviewed by the Town's hired assessor who recommended that no abatement be granted, except for the correction of the building size; and

(3) the topography adjustment was set by the individual who reviewed all three properties, and the adjustment reflected the topographical differences between the three properties.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$106,000 (land \$59,150; building \$46,850). This ordered assessment is based on changing the undeveloped factor in the land-assessment calculation from a .90 to a .85, which reflects the Property's lack of water. The Taxpayers testified that while the Property has been improved and includes a septic system, the Property presently does not have a well. The board is familiar with the department of revenue administration's assessment methodology. We find the change in the assessment after the Property was developed was incorrectly done because the undeveloped factor was changed from .70 to .90. This factor change is made to address site development costs such as lot

clearing, site work, septic and well. Where the development actually performed does not include all of these items, the undeveloped factor must reflect this. Normally, a property that goes from an undeveloped state to a developed state includes water, and the change in the undeveloped factor reflects the existence of water. Therefore, the board has applied a .85 undeveloped factor to reflect the lack of water, resulting an new assessment calculation as follows.

	<u>Basic Value</u>	<u>Topo. Adj.</u>	<u>Excess Adj.</u>	<u>Undev. Adj.</u>	<u>Assessment</u>
Land Assessment	\$108,750	.80	.80	.85	\$59,150

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Other than this correction, the board finds the Taxpayers did not show the Property was overassessed. The Taxpayers did not present any credible evidence of the Property's fair market value. To carry their burden, the Taxpayers 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. 214, 217-18 (1985).

While the Taxpayers did not submit any market information, the Taxpayers attempted to show overassessment by comparing the Property's assessment to two nearby properties. The board was not convinced that this assessment comparison showed overassessment of the Property, especially given the Town's testimony describing the differences between the Property and the Newell

property and the Roberts property. While the Taxpayers may have a legitimate concern about the difference in the assessments of the nearby properties, the Town provided a reasonable explanation that the Taxpayers failed to overcome.

If the taxes have been paid for the tax year 1996, the amount paid on the value in excess of \$106,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a. Pursuant to RSA 76:17-c II, and board rule TAX 203.05, unless the Town has undergone a general reassessment, the Town shall also refund any overpayment for 1997 and 1998. Until the Town undergoes a general reassessment, the Town shall use the ordered assessment for subsequent years with good-faith adjustments under RSA 75:8. RSA 76:17-c I.

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

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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

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Jeffrey and Cheryl Lloyd, Agents for Irving and Eleanor Rhines, Taxpayers; and Chairman, Selectmen of Tamworth.

Date: December 17, 1998

Valerie B. Lanigan, Clerk

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