

Collette Boisvert

v.

Town of Hillsboro

Docket No.: 17215-96PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1996 assessment of \$64,300 on a vacant, 18.6-acre lot (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 entire site has been found to be contaminated and is located in the Groundwater Management Zone as designated by the State of New Hampshire Department of Environmental Services (Taxpayer Exhibit #3);

(2) contaminated properties require extended marketing times and are not able to obtain conventional financing; and

(3) an appraisal by Randolph W. Daniels (Daniels appraisal) estimates the Property's market value to be no more than \$45,500 as of the date of the assessment.

Page 2

Boisvert v. Town of Hillsboro

Docket No.: 17215-96PT

The Town argued the assessment was proper because:

(1) the party that caused the contamination, Osram Sylvania, Inc., has admitted to all liability and has agreed to all responsibility for any remediation costs;

(2) one of the properties within the Groundwater Contamination Zone was able to complete refinancing after the contamination was discovered; and

(3) a study performed by Fremeau Appraisal (Fremeau study) showed no diminution in value for contaminated properties, including the appealed Property, under certain circumstances.

Board's Rulings

The major issue before the board is whether the assessment should be reduced because of contamination. Therefore, the Taxpayer has the burden to show that the contamination affected the Property's market value. We find the Taxpayer failed to carry this burden.

The Taxpayer submitted an appraisal by Mr. Randolph W. Daniels estimating the market value for the appealed Property at \$45,500 on April 1, 1996. The board finds Mr. Daniels' assumptions and conclusions in the appraisal were not relevant to the Property. Mr. Daniels did a valuation of the Property as though clean and then applied an adjustment of 30%,

discounting the clean value for the presence of the contamination. The board finds Mr. Daniels' 30% adjustment is not warranted in this instance for several reasons. In the last paragraph on page 36 of the his appraisal, Mr. Daniels makes three points of emphasis relating to some sales of contaminated properties. The board will address each of these points as they relate to the Property. First, Mr. Daniels finds that the sale of his contaminated property used to estimate an adjustment factor was a cash purchase. However, he does not relate whether or not any attempt at financing was made for this property.

Certainly, there are sales of uncontaminated properties that are made for cash also. Just because a sale is a cash transaction does not necessarily mean that it is a nonarm's-length sale. Mr. Daniels testified that he had

Page 3

Boisvert v. Town of Hillsboro

Docket No.: 17215-96PT

contacted 10 lending institutions and none would consider financing any property that was labeled as contaminated (see page 32 of Daniels Appraisal, Taxpayer Exhibit #1). However, the refinancing of the Dunkin' Donuts sale next door to the Property was through a lending institution (Merrimack County Savings Bank) that did not hold the first mortgage (see page 16 of Fremeau Appraisal, Municipality Exhibit B). In fact, the lender was one of the bank's polled by Mr. Daniels. This is an indication that financing is available under certain circumstances. The responsibility and liability for the clean up of the contamination rests solely on the shoulders of Osram Sylvania. The company has agreed that it is responsible for the contamination and liable for any remediation costs. Given that scenario, it is not unreasonable for a lending institution to consider some financing for the Property.

The second point Mr. Daniels made was for the fact that the contaminated properties that sold in Bow, although being originally residential in nature,

were purchased because they had some commercial potential and would not require the same water usage as a residence. In the instant case, the Property has the ability to be connected to the municipal sewer and water systems. Therefore, having a potable water supply is not an issue. Additionally, the Property is both in the commercial and residential zoning districts with the frontage and the portion closest to the roadway being in the commercial district. According to Mr. Daniels, this commercial potential would tend to negate some of the impact of the contamination.

Mr. Daniels' third point is that if the selling price is attractive enough, the market will eventually produce a willing buyer. The Property's equalized assessment is less than the selling price of either of the sales in Bow used by Mr. Daniels. The Dunkin' Donuts site which abuts the Property sold for several hundred thousand dollars, approximately four times more than the assessment on the Property. Further, Mr. Daniels referred to the Niemela property in Mason, New Hampshire as indicative of the effects of contamination on the value of a property. In support of this position, Mr. Daniels includes

Page 4
Boisvert v. Town of Hillsboro
Docket No.: 17215-96PT

a property disclosure statement regarding environmental matters for the Niemela property in an addenda in his report. The board finds this information, as presented, to be inconclusive. Mr. Daniels does not discuss how the Niemela property compares to the Property. Does the Niemela property have town water; has the party responsible for the contamination accepted responsibility; who will pay for remediation; what is the zoning for this property? These are some of the questions that would need to be answered before the board could make any comparison to the Property.

Additionally, the Taxpayer submitted a portion of a report prepared by Eagle Engineering, Inc. (Taxpayer Exhibit #4) supporting the Taxpayer's position. However, the Taxpayer failed to submit the attachments referred to in the report therefore preventing the board from reviewing its conclusions.

Further, the Taxpayer submitted two affidavits (Taxpayer Exhibits #5 and #6) discussing the sale details of an abutting contaminated property. The board finds these affidavits support the findings of Mr. Daniels and the board that, at an appropriate price, sales of contaminated properties may occur.

The Town submitted a study of the Property by Fremeau Appraisal Inc. done in 1995 (Municipality Exhibit B). In the Fremeau study, on page 17, Mr. Fremeau states that it is his conclusion that there is no diminution in value for the Property as a result of the presence of volatile organic compounds and he reiterates in his study the fact that the abutting property was financed and then refinanced through different lending institutions knowing full well that there was some level of contamination on the refinanced property.

The board does not find the Taxpayer's evidence concerning lack of financing to be persuasive. The Taxpayer acknowledged that financing had not been sought and that the market had not been tested, i.e., the Taxpayer never placed the Property for sale on the market. In other words the Taxpayer did not present any property-specific evidence to prove that the Property's value was adversely affected.

Page 5
Boisvert v. Town of Hillsboro
Docket No.: 17215-96PT

The board finds Mr. Daniels' estimate of market value in his before situation to be the best estimate of market value and because this approximates the equalized assessment as determined by the Town of Hillsboro,

the board finds that no abatement is warranted and the appeal is denied.

Findings of Fact and Rulings of Law as Proposed by the Taxpayer

In these responses, "neither granted nor denied" generally means one of the following:

- a. the request contained multiple requests for which a consistent response could not be given;
- b. the request contained words, especially adjectives or adverbs, that made the request so broad or specific that the request could not be granted or denied;
- c. the request contained matters not in evidence or not sufficiently supported to grant or deny;
- d. the request was irrelevant; or
- e. the request is specifically addressed in the decision.

1. Granted.
2. Granted.
3. Neither granted nor denied.
4. Neither granted nor denied.
5. Granted.
6. Granted.
7. Granted.
8. Granted.
9. Granted.
10. Granted.
11. Granted.
12. Granted, less than Mr. Daniels' \$65,000 uncontaminated value.
13. Denied.
14. Denied.

15. Neither granted nor denied.
16. Granted.
17. Neither granted nor denied.
18. Granted.
19. Denied, the Town testified they took contamination into consideration but found no affect on value.
20. Neither granted nor denied.
21. Neither granted nor denied.
22. Denied.
23. Denied.
24. Denied.
25. Denied.

Rehearing

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.

Page 7
Boisvert v. Town of Hillsboro
Docket No.: 17215-96PT

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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 Richard W. Head, Esq., Counsel for Collette Boisvert, Taxpayer; David C. Wiley of the Department of Revenue Administration, Agent for the Town of Hillsboro; and Chairman, Selectmen of Hillsboro.

Date: March 11, 1999

Valerie B. Lanigan, Clerk

0006