

Patricia L. Altomare

v.

Town of Pelham

Docket No.: 17415-97PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1997 assessment of \$96,900 (land \$38,600; buildings \$58,300) on a 1.74-acre lot with a single-family home (the "Property"). For the reasons stated below, the appeal for abatement is granted.

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 carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) in 1996, the New Hampshire Department of Environmental Services and the United States Environmental Protection Agency found large amounts of contaminants in the abutting junkyard which has been an illegal waste site for 20 years;

Page 2

Altomare v. Town of Pelham

Docket No.: 17415-97PT

- (2) the artesian well on the Property cannot be used for drinking water due to the contaminants;
- (3) the presence of wetlands further exacerbates the contamination problems;
- (4) because of disclosure requirements, the Property cannot be sold without suffering a financial loss;
- (5) the land should not be taxed because it is contaminated; and
- (6) the Town had adjusted some abutters' properties for 20 years because of the junkyard.

The Town argued the assessment was proper because:

- (1) the adjustments made (10% on the building, 20% on the land with an additional 5% topography for wetlands) account for the presence of the junkyard and accurately reflect the Property's value;
- (2) as of the date of the revaluation the Town used the information available;
- (3) a March 1997 sale for \$141,000 in the neighborhood sold near the assessed value (\$140,400) which supports the assessment practices of the Town;
- (4) the Taxpayer has not placed the Property on the market to see what value it could bring; and
- (5) the Taxpayer had an appraisal done three to four years ago prior to the knowledge of contaminants which estimated the value to be \$126,000.

Board's Rulings

Based on the evidence, the board finds the correct assessment should be \$82,100 based on a land assessment of \$23,800 and the improvement's assessment of \$58,300. The land assessment of \$23,800 is comprised of the value for the primary site of \$21,800 and the value for the excess acreage of \$2,000. The board finds the Town's adjustment does not fully capture the

Page 3

Altomare v. Town of Pelham

Docket No.: 17415-97PT

affect the contamination has on the Property's value. The board did not find any additional revision was warranted to the improvements section of the assessment.

The board has adjusted the Taxpayer's land assessment in a manner similar to that used by the Town for the Raza (map 8-40) and Talbot (map 8-257) properties. The board has applied a 50% adjustment for the presence of the contamination and maintained the 5% adjustment for the wetlands. The Town had previously used a 20% adjustment for the presence of the junkyard along with a 5% adjustment for the wetlands. The board made these revisions for the following reasons.

First, the Taxpayer submitted Taxpayer Exhibit #1 which was a packet containing several studies done by the United States Environmental Protection Agency or other engineering, and environmental firms. One of the studies was the Roy F. Weston, Inc. report entitled "Removal Program, Preliminary Assessment/Site Investigation Report for the Gendron Junkyard Site, Pelham, New Hampshire (Report)." The Report was submitted on December 3, 1997, however, the information contained in it was gathered over the previous year or more. On page 2 of the Report the company states "The levels of lead detected in the Altomare and Smith wells were above state drinking water standards." This determination was made after the New Hampshire Department of Environmental Services conducted some residential well samplings in the area during the spring and summer of 1997. See Appendix B, Figure 2 of Report showing samplings on the Altomare, Edwards, Raza and Talbot properties. This finding supports the Taxpayer's discussion on the use of bottled water for drinking as the well does not provide potable water for human consumption. The Town testified they were not denying the presence of the

Page 4

Altomare v. Town of Pelham

Docket No.: 17415-97PT

contamination and that had the information been available to them at the time of the assessment they may have made other adjustments to the Property's land assessment.

Secondly, the Taxpayer testified that because a portion of her Property was wetlands this increased the potential, given the flow direction of the Island Pond Brook, for contaminants to encroach on a larger portion of her Property rendering the rear portion unusable. The Taxpayer

also testified, and the Town did not rebut, the fact that the hazardous waste site had encroached onto the Taxpayer's Property by approximately 30 feet due to the piling of assorted materials on the Property. Although the board is not staffed with an environmental scientist, it is the board's opinion after reviewing the materials submitted by both parties that Island Pond Brook is contaminated and the continued presence of these contaminants coupled with the abutting wetlands and directional flow of the brook, necessitates some further adjustment, similar to what was made for the Raza and Edwards properties.

The board agrees with the Taxpayer that given the documented contamination in the area that any attempts to sell the Property would require full disclosure of the ongoing analysis of the hazardous waste site and the contamination leaching from it. The Taxpayer spoke with several realtors in the area and, although no documentation was provided, the testimony from the Taxpayer was the market value would be reduced significantly given the presence of the contamination. In addition to the realtors, the Taxpayer spoke with several lending institutions and the testimony from the Taxpayer was that none of the lending institutions would put any comments in writing but indicated verbally that they would not be involved with a contaminated property.

Page 5

Altomare v. Town of Pelham

Docket No.: 17415-97PT

The Town submitted evidence that the property at 14 Balcom Road (Furbush) transferred in March 1997 for \$141,000, very near the assessed value of \$140,400. The Town testified this was evidence of proportionality and supported its position that there was no need to adjust any assessments further. However, the Taxpayer testified she had a conversation with the new owners and they stated they were unaware of any hazardous waste site nearby at the time they purchased their property. Also, they were not concerned because their property is at a higher elevation and does not contain any wetlands. Because of these issues the board did not consider this sale as a reliable piece of evidence.

If the taxes have been paid for the tax year 1997, the amount paid on the value in excess of \$82,100 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 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 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

Page 6

Altomare v. Town of Pelham

Docket No.: 17415-97PT

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

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Patricia L. Altomare, Taxpayer; and Chairman, Selectmen of Pelham.

Date: April 6, 1999

Lynn M. Wheeler, Clerk

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ORDER

This order responds to the “Town’s” motion for clarification of the calculations performed by the board to determine the land value assessment.

As stated in the board’s decision, the board has followed the methodology that the Town employed for the Raza property (Map 8, Lot 40) in determining the land value for the “Property.” The actual calculation for the primary site is as follows:

$$\$43,560 \times 1.01 \times 1.00 \times .45 \times 1.1 = \$21,778 \text{ rounded to } \$21,800.$$

The .45 factor represents a 50% reduction for the contamination and a 5% reduction for the wetlands. To this value for the primary site must be added the \$2,000 value of the excess land; combining these two figures, \$21,800 plus \$2,000, equals \$23,800, the total land value assessment.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Michele E. LeBrun, Member

Douglas S. Ricard, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Patricia L. Altomare, Taxpayer; and Chairman, Selectmen of Pelham.

Date: May 5, 1999

Lynn M. Wheeler, Clerk

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