

Raymond C. Cummings 1993 Trust

v.

Town of Loudon

Docket No.: 18593-00PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$382,800 (land \$196,600; buildings \$186,200) on Map 11, Lot 34, a 5.05-acre lot with a garage, “oil plant” (heating oil distribution facility) and office (the “Property”). For the reasons stated below, the appeal for further abatement is denied.

The Taxpayer has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 201.27(f); TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property has no curb cut or other access to Route 106, but only is accessed off Chichester Road;
- (2) trees block the view of the Property from Route 106;
- (3) while the Town granted a 20% (minus) adjustment to the land value, a 50% adjustment is appropriate; and
- (4) part of the Property is in a residential zone, further reducing its value.

The Town argued the assessment was proper because:

- (1) land in the commercial zone is valued at the same base rate of \$100,000 per acre;
- (2) in this case, the Taxpayer received a 20% reduction to the base rate at the Town abatement level because of the lack of curb cuts on Route 106 and no further adjustment is warranted;
- (3) the Town does not have any restrictions that would affect the Taxpayer's ability to cut trees to improve visibility and the Taxpayer has not applied for any permission to do so;
- (4) the Taxpayer does not dispute the building value; and
- (5) the Taxpayer failed to meet his burden of proof.

Board's Rulings

Based on the evidence, the board finds no further abatement is warranted.

Through the abatement process, the Town reduced the original assessment of \$422,800 by \$40,000 (20% of \$100,000 for each of the two primary acres) to the \$388,800 amount shown above. The Town's contract assessor testified this adjustment was made to take into account the lack of any curb cuts on Route 106. (Although the Property has frontage on Route 106, access is via Chichester Road.)

The Taxpayer argued, however, that a larger reduction (50%) was appropriate, but failed to present any evidence regarding the market value of the Property and how it was adversely affected by the conditions described above to a degree sufficient to warrant a larger adjustment. As noted above, the Town gave the land a minus 20 percent adjustment. The Town testified another property owner along Route 106 (Honey Dew Donuts) was able to get permission to cut down trees to increase visibility from the highway, and there was no evidence the Taxpayer ever requested, and was denied, permission to do so.

The Taxpayer's argument the assessment should be lower because a smaller part of the Property is not in the commercial zone (see Taxpayer Exhibit 3) fails to acknowledge the Town did not assess the entire parcel as primary commercial land, but did so only with respect to 2 of the 5.03 acres; the remainder was assessed at a much lower base rate (\$15,000 per acre rather than \$100,000 per acre) and was then given a minus 20% "size and quality" adjustment.

The Taxpayer also does not dispute the assessed value of the buildings. It is well established, however, that the board must consider the market value of the Property as a whole, rather than individual components of the assessment. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). Without evidence of whether the buildings were over-, under- or properly assessed, the burden of proving the land component, and, in turn, the Property as a whole, was overassessed becomes more difficult.

For all of these reasons, the board finds the Taxpayer failed to meet the burden of proving it was entitled to a further abatement. The appeal is, therefore, denied.

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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to: Raymond C. Cummings 1993 Trust, Taxpayer; Loren J. Martin of Nyberg Purvis and Associates, representative for the Town; and Chairman, Selectmen of Loudon.

Date: November 26, 2002

Anne M. Bourque, Deputy Clerk