

Raymond C. and Eileen M. Cummings

v.

Town of Loudon

Docket No.: 18595-00PT

DECISION

The “Taxpayers” appeal, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$27,400 on Map 49, Lot 121, a 1.15-acre vacant lot (the “Property”). The Taxpayers also own, but did not appeal, several other residential properties (including Map 49, Lot 63; Map 20, Lot 16; and Map 39, Lot 44). For the reasons stated below, the appeal for 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) access to the Property is via a “paper” street;
- (2) the street (Crab Apple Way) is private and not maintained by the Town; and
- (3) the assessment is excessive because it fails to take these facts into account.

The Town argued the assessment was proper because:

- (1) access is real, not simply on “paper,” because the Property is served by an existing, private paved road maintained by the Taxpayer;
- (2) when making its assessments, the Town did not find differences in selling prices between lots on private and Town-maintained roads;
- (3) the lot is a buildable lot even though it is less than two acres, because of a ‘grandfather’ provision, and the Property was given a 20% downward adjustment from its base value because it was unimproved (with water and septic);
- (4) the resulting assessment (\$27,400) is fair and proportionate and is in line with the selling prices of comparable properties; and
- (5) the Taxpayers failed to meet their burden of proof.

Board’s Rulings

Based on the evidence, the board finds the Taxpayers failed to meet their burden of proof that the assessment was disproportional.

The board has examined the comparable sales information presented by the Town and notes the Town applied a consistent methodology in assessing similar lots. The Davis property, for example, located on Clough Pond Road (Map 58, Lot 22) in the same neighborhood, is the same size (1.3 acres) and was also assessed by the Town at \$27,400; it was subsequently sold for \$37,900, which indicates land of this type was appreciating in value. See the Town’s

assessment-record cards submitted as part of the Municipality's Prehearing Statement.

The board has also reviewed photographs of the Property and the tax map submitted submitted by the Taxpayers. See Taxpayer Exhibits 1 and 2. The photographs show Crab Apple Way is a paved road and indicate the lot is fairly level and attractive. The tax map indicates the Property is situated close to Shaker Road and Route 106, which provides favorable access to major thoroughfares. The Taxpayers own a larger parcel (Lot 63–6.3 acres) on which the private roadway is located. An adjacent parcel (Lot 122) is owned by related parties and is also served by the same roadway.

In New Hampshire, the term “paper street” is used to describe a roadway designated on a subdivision plan or other document, but which has never been developed or used as a street. See, generally, Polizzo v. Town of Hampton, 126 N.H. 398, 399 (1985). In this case, the Town emphasized Crab Apple Way did not exist just on paper, but has a ‘physicality’ as a paved, privately maintained roadway. The board also notes the legislature later amended RSA 674:41, in 2002, adding a specific provision to permit issuance of building permits for lots situated on private roads. See RSA 647:41, I (d) (Supp. 2002).

The board does not find the two comparables submitted by the Taxpayers (Exhibit 3) to be persuasive evidence the Property was underassessed. The assessment-record cards indicate these lots (Map 20, Lots 16 and 17) are in a different neighborhood and have already been developed (with a house and a commercial building). The difference in the assessed land values for these properties and the Property is relatively small (\$2,400) and they are slightly smaller in size (1.0 acre each). It is also not valid to compare the lot value of the Property to the isolated land values of these comparables, since in each instance it is the value of the estate as a whole

that is determinative, not the allocation between land and building values. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). No evidence of market value (sales data) exists for either of these lots and the board is, therefore, unable to conclude the Taxpayers' evidence supports a lower assessment for the Property.

The evidence indicates the Town used the same methodology in assessing this Property and other properties in the Town. This practice is further evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

For all these reasons, the board finds the Taxpayers did not meet their burden of proving they are entitled to an abatement.

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, 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