

Village of Northwood Ridge Water District

v.

Town of Northwood

Docket No.: 18647-00PT

DECISION

The Village of Northwood Ridge Water District (the “District”) appeals, pursuant to RSA 76:16-a, the “Town’s” 2000 assessment of \$75,000 on a 0.15-acre portion (identified as Lot 39-A) (the “Property”) of the District’s 12-acre parcel identified as Map 221, Lot 39. For the reasons stated below, the appeal for abatement is denied.

The District must first establish standing to appeal the tax assessment and then has the burden of showing, by a preponderance of the evidence, the assessment was disproportionately high or unlawful, resulting in the District 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).

The District argued the assessment was excessive because:

(1) the Property should be exempt in the same fashion as other similar municipally-owned parcels leased to private entities in the Town;

(2) the assessed value of \$75,000 appears to be based on an arbitrary allocation of the total value

of \$300,000 for the communication tower and the site;

(3) the site is not as valuable as other communication tower sites due to its general location and poor access; and

(4) the site has no alternate value due to its proximity to public water supply.

The Town argued the assessment was proper because the Property appears to be appropriately and, if anything, under-assessed based on an income approach estimate utilizing rents of several communication tower leases summarized in Municipality Exhibit A.

Board's Rulings

To qualify for an abatement, a party must be a "person aggrieved" by the tax. See RSA 76:16 and 16-a. For the following reasons, the board finds the District is not aggrieved by the Town's assessment in tax year 2000.

As Mr. Jacobsmeyer, Chairman of the Village of Northwood Ridge Water District Commission, testified, and as the Site Agreement ("Lease") (Taxpayer Exhibit No. 2) between the District and ATC Realty, LLC ("ATC") indicates at paragraph 9, the District has either been reimbursed by ATC or has forwarded the tax bills directly to ATC for payment and thus has not paid any of the taxes assessed on the Property. Because the Lease provides for ATC ("Lessee")

to "pay any and all increases in real estate taxes imposed upon the Property . . ." ¹ as a result of

¹The board notes that the Lease, which was executed in May, 1999 does not contain the provision relative to payment of taxes by the Lessee as required in RSA 72:23 I (b). Inclusion of such language would have established the liability of taxes unequivocally upon the Lessee ATC. Nonetheless, paragraph 9 of the Lease results in the same effect by the Lessee being responsible for any and all real estate taxes as a result of

the construction of the communication tower, the District is not aggrieved by the Town's assessment and has no standing to receive an abatement. Cf. Barksdale v. Town of Epsom, 136 N.H. 511, 514 (1992) ("We agree . . . that a taxpayer must be 'personally aggrieved' by a tax to receive an abatement, see RSA 76:16"); compare Langford v. Town of Newton, 119 N.H. 470, 472 (1979) (under the statute, "person aggrieved" is one who has "allegedly suffered the injury of being disproportionately assessed.")

Because the board has determined the District is not aggrieved, the board need not make findings as to the Town's assessed value and the alleged disproportionality.

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

Paul B. Franklin, Chairman

construction or installation of the "wireless communications facility" under the Lease.

Michele E. LeBrun, 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: John J. Jacobsmeyer, Jr., representative for the District; and Chairman, Selectmen of Northwood.

Date: November 4, 2002

Anne M. Bourque, Deputy Clerk