

Anthony T. Coraine

v.

City of Rochester

Docket No.: 19851-02PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “City’s” 2002 assessment, as abated, of \$31,800 on a 2.02-acre vacant lot, identified as Map 251, Lot 180 on Ridgewood Drive (the “Property”). (The Taxpayer owns four other properties in the City; the parties stipulated the other properties were reasonably assessed.) For the reasons stated below, the appeal for abatement is granted.

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. The Taxpayer carried this burden.

The Taxpayer argued the assessment was excessive because:

(1) the Property has been offered for sale since 2001;

- (2) three purchase offers fell through because the Property is not developable since it is wet and not suitable for a septic system;
- (3) the Taxpayer purchased the Property and other lots in a subdivision in the mid-1980s; and
- (4) the land has no value, even for abutters.

The City argued the assessment was proper because:

- (1) the abatement application contained no supporting evidence except for a realtor's opinion of value;
- (2) the City's assessor did some investigation, verifying a subdivision was approved by the department of environmental services and also looking at the topography and soils maps;
- (3) while the Property presents problems for development, the City made a 25% adjustment for the estimated extra cost to develop the lot (based on an estimate of 3,000 tons of gravel at \$4 per ton); and
- (4) if the Property is not a buildable lot, then it should be assessed as excess or rear land at \$3,200 per acre.

Board's Rulings

Based on the evidence, the board finds the proper assessment to be \$6,450. This assessment is arrived by valuing the 2.02 acres as excess land instead of a buildable house lot based on the evidence submitted by the Taxpayer.

The two engineering letters (Norway Plains Associates and Berry Surveying and Engineering, included in Taxpayer Exhibit 1), combined with the Taxpayer's unsuccessful marketing of the parcel as a buildable lot, are adequate evidence to conclude the lot in all likelihood is unbuildable due to the inability to place an onsite septic system on the lot. In addition to the lot's slope, the drainage and wetlands appear to be so extensive that no onsite

septic system is economically feasible. The parties also agreed municipal sewer is not available anywhere in the neighborhood to provide some future development potential for the lot.

Consequently, the board concludes the land has only excess acreage value and should be assessed as such.

If the taxes have been paid, the amount paid on the value in excess of \$6,450 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

Until the City undergoes a general reassessment or in good faith reappraises the property pursuant to RSA 75:8, the City shall use the ordered assessment for subsequent years.

RSA 76:17-c, I and II.

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(f). 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

Douglas S. Ricard, Member

Albert F. Shamash, Esq., Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Anthony T. Coraine, 5 Edgewood Lane, Rochester, New Hampshire 03867, Taxpayer; and Chairman, City Council, City of Rochester, 31 Wakefield Street, Rochester, New Hampshire 03867.

Date: March 9, 2005

Anne M. Stelmach, Deputy Clerk