

Laura B. Truesdell

v.

Town of Franconia

Docket No.: 23102-06PT

DECISION

The “Taxpayer” appeals, pursuant to RSA 76:16-a, the “Town’s” 2006 assessment of \$431,473 (land \$164,173 (including 6.03 acres assessed in current use); building \$267,300) on Map 16/Lot 2-1, a single family home on a 7.030 acre lot (the “Appealed Lot”). The Taxpayer also owned the adjoining property on Map 16/Lot 2 which was not appealed (the “Non-appealed Lot”). 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) the Town improperly applied a neighborhood J factor with an adjustment factor of 150 to the land because it was accessed by a right of way from Meadow Crest Drive despite its legal frontage being on Route 116;
- (2) the Appealed Lot is not part of the Meadow Crest subdivision nor is it included in the Meadow Crest Neighborhood Association;
- (3) the “panhandle” portion of the lot providing the legal access on Route 116 drops approximately 100 feet in elevation to the swampy frontage on Route 116;
- (4) the 2-3 acre “panhandle” area cannot be utilized as a functional portion of the house lot due to its configuration, slope and wet frontage; and
- (5) the neighborhood adjustment factor should be reduced to neighborhood E with a factor of 100, similar to other properties fronting on Route 116, resulting in a reduction of the land assessed value of \$41,800.

The Town argued the assessment was proper because:

- (1) during the 2006 reassessment, the methodology employed was to assign the neighborhood factor to each parcel based on where the lot is accessed;
- (2) the Town has a number of small, short-road subdivisions where sales indicate the lots within the subdivision are selling higher than those that are accessed directly on a state highway as shown in Municipality Exhibit C;
- (3) these small subdivisions provide several positive benefits such as quiet neighborhoods, minimal traffic, generally underground utilities and usually restrictions prohibiting further subdivision;

(4) the Appealed Lot, while having legal frontage on Route 116, is accessed off of Meadow Crest Drive by a right of way over an adjoining property and thus enjoys all the benefits that the market has shown accrue to such small lot subdivisions.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Appealed Lot was disproportionately assessed.

The Taxpayer's primary argument was because the legal frontage was on Route 116, the neighborhood factor should be reduced from a J to an E reducing the assessment by \$41,800. The board finds this assertion was not supported by any market evidence. In fact, the sales contained in Municipality Exhibits A and C demonstrate that lots within such small subdivision neighborhoods sell for more than lots accessed from state roads and are negatively influenced by the noise and traffic of the more heavily traveled roads. While none of the sales presented by the Town have an exact situation as the Appealed Lot (access from a private subdivision via a right of way but not part of a private subdivision), the board finds the Appealed Lot benefits from many of the attributes the Town described that generally relate to these small subdivisions including minimal traffic and noise, underground utilities, further subdivision restrictions, etc. The Taxpayer testified the right of way was obtained in exchange for granting a view easement to the adjoining property and thus was perceived as having some value beyond the property rights embodied in the Appealed Lot and Non-appealed Lot before they were subdivided in 2004. The board notes having access to Meadow Crest Drive at essentially the same elevation as the house site reduced the Appealed Lot's development costs in 2005 when the driveway and site work were performed and minimizes the maintenance of the driveway versus what it would have been if it had exited onto Route 116.

Further, the board finds the development costs testified to by the Taxpayer of approximately \$280,000 plus an undeveloped lot value of approximately \$150,000 (see sale of adjoining lot Map 16/Lot 1-15) supports the Town's total assessment.

Last, the board finds the Town supported, with sales, its assessment methodology of assigning the neighborhood factor based on the lot's access and that it consistently applied this methodology during the reassessment. This testimony is evidence of proportionality which must always be relative to market value. See, Bedford Development Co. v. Town of Bedford, 122 N.H. 187, 189-90 (1982). In conclusion, the board finds the Taxpayer's requested revision and abatement would result in disproportionality and, thus, must be 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(g). 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

Michele E. LeBrun, Member

Certification

I hereby certify a copy of the foregoing Decision has this date been mailed, postage prepaid, to: Laura B. Truesdell, 3 Hervey Street, Cranston, RI 02920, Taxpayer; Chairman, Board of Selectmen, Town of Franconia, PO Box 900, Franconia, NH 03580; and David S. Woodward, Avitar Associates of New England, Inc., PO Box 307, Milan, NH 03588, Contracted Assessing Firm.

Date: October 23, 2008

Anne M. Stelmach, Clerk