

Emmett T. Jeffers

v.

Town of Rindge

Docket No.: 7418-89

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1989 assessment of \$212,700 (land, \$152,050; buildings, \$60,650) on a .42-acre lot with a two-story cottage (the Property). For the reasons stated below, the appeal for abatement is granted.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer carried this burden and proved disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) it was arrived at using prices established during an inflated market;
- (2) the assessment and taxes increased significantly from the prior years;
- (3) the land assessment was excessive;
- (4) the Property was worth approximately \$180,000 to \$175,000 in April 1989;
- (5) the lake properties were assessed disproportionately higher than

nonlakefront properties; and

(6) it exceeded two appraisals--August 1991 \$160,000 and October 1992 \$155,000.

The Town argued the assessment was proper because:

- (1) the land assessment was arrived at based on a sales survey; and
- (2) it was consistent with two sales and the assessments on two abutting lots.

Board's Rulings

Based on the evidence, we find the correct assessment should be \$200,000. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. However, the existing assessment process allocates the total value between land value and building value. The board has not allocated the value between land and building, and the municipality shall make this allocation in accordance with its assessing practices.

The board is not obligated or empowered to establish a fair market value of the Property. Appeal of Public Service Company of New Hampshire, 120 N.H. 830, 833 (1980). Rather, we must determine whether the assessment has resulted in the Taxpayer paying an unfair share of taxes. See Id. Arriving at a proper assessment is not a science but is a matter of informed judgment and experienced opinion. See Brickman v. City of Manchester, 119 N.H. 919, 921 (1979). This board, as a quasi-judicial body, must weigh the evidence and apply its judgment in deciding upon a proper assessment. Paras v. City of Portsmouth, 115 N.H. 63, 68 (1975). Based on the Board's judgment, the assessment was disproportional. Time trending the Taxpayer's appraisal to April 1, 1989 supports this conclusion as does the Taxpayer's attempts to sell the property. The Taxpayer's other argument concerned the increase in assessment and taxes. Increases from past assessments are not evidence that a

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taxpayer's property is disproportionally assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). Concerning the high amount of taxes he must pay, the amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

If the taxes have been paid, the amount paid on the value in excess of \$200,000 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Emmett T. Jeffers, Taxpayer; Department of Revenue Administration; and Chairman, Selectmen of Rindge.

Dated: November 30, 1992

Valerie B. Lanigan, Clerk

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Gerald L. and Anna F. Estee

v.

City of Dover

Docket No.: 5841-89

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "City's" 1989 assessment of \$57,600 (land, \$16,900; buildings, \$40,700) on a 13,490 square-foot lot with a ranch-style house (the Property). The Taxpayers failed to appear, but consistent with our Rule, TAX 102.03(g), the Taxpayers were not defaulted. This decision is based on the evidence presented to the board. For the reasons stated below, the appeal for abatement is denied.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayers paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers indicated they would be unable to attend the hearing and submitted their arguments in writing. They argued the assessment was excessive because:

(1) other house lots in the neighborhood are assessed at lesser square foot rates; and

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(2) the land assessment in the taxpayer's immediate neighborhood increased during the 1981 reassessment 40 percent more than other nearby areas.

The City argued the assessment was proper because:

(1) several house lots in the Taxpayer's neighborhood were assessed too low with the incorrect square foot rate and have since been corrected; and

(2) with these corrections, the Taxpayers are consistently assessed with nearby comparable properties.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the City supported the Property's assessment.

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value. This value would then have been compared to the Property's assessment and the level of assessments generally in the City. See, e.g., Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986); Appeal of Great Lakes Container Corporation, 126 N.H. 167, 169 (1985); Appeal of Town of Sunapee, 126 N.H. at 217-18.

The Taxpayers argued their assessment had increased at greater percentage than other property. However, a greater percentage increase in an assessment following a city-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a

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reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

The City stated it had corrected the underassessment of other property.

Regardless, however, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this

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date, postage prepaid, to Gerald L. and Anna F. Estee; Taxpayers; and
Chairman, Board of Assessors of Dover.

Dated: November 30, 1992

Valerie B. Lanigan, Clerk

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