Donald and Nancy Damm
John and Barbara Zerjav

v.

Town of Washington

Docket No.: 10192-90PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $46,160 on a vacant, .67-acre lot (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Town selectively reassessed lakefront properties by increasing the front-foot value, which the Town should not have done;

(2) the Town's methodology of using a standard 100' x 200' lot resulted in an excessive assessment; and

(3) the assessment should be $100,787.

The Taxpayer submitted a packet of material to support the appeal and made

extensive arguments. Those materials and arguments were reviewed but will not be reiterated here.

The Town argued the assessment was proper because:

(1) the assessment was proportional to other lake property assessments;

(2) the lakefront assessments were updated in 1990 because the Town realized the 1989 revaluation analysis for lakefront properties used earlier sales than the sales used for nonwaterfront properties, resulting in an under assessment of the waterfront properties compared to nonwaterfront properties;

(3) the new front-foot value was arrived at using sales closer to the assessment date and dates consistent with the dates used on other properties; and

(4) the methodology used did not result in over assessment.

The Town presented material to support its arguments and the assessment. Those materials were reviewed but will not be reiterated here.

The parties spent considerable time discussing whether the sales that were presented were valid sales that could be or could not be used for assessing properties.

Board's Rulings

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

Based on the evidence, we find the correct assessment should be $46,160. This assessment is ordered because the Taxpayers' main contention in appealing their assessment was that the Town's assessment methodology was flawed for the reason stated in their arguments. The board finds that the Town's system was neither flawed nor that the Taxpayers presented any market evidence to support

their claim of incorrect methodology. The board has reviewed in detail the exhibits presented by the parties. In particular, the board finds the Town has complied with the requirements of RSA 75:8 by correcting the assessments on Ashuelot Pond. While in this case the board finds that the Town's methodologies of averaging the resulting front-foot prices of two sales and calculating the figured frontage by averaging the front and rear lot lines are not commonly accepted appraisal methodologies such as those practices that did not result in the assessments being disproportional. ("Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899)).

The board reviewed the analysis and refigured it based on triangulating the dimensions of the lots that sold, and finds that the resulting difference in assessment when the base rates are then applied to the Taxpayers' is minimal and insignificant. The averaging of front and rear lot lines could cause significant discrepancies in valuation if the configuration of the lots were more irregular than is the norm on Ashuelot Pond. Because most of the lots are relatively regular around the pond, (notwithstanding some slight variation) the difference between averaging and triangulating, as found in the board's earlier decision (Docket No.: 7481-89), is minor and insignificant.

The most critical reason the Taxpayers' appeal is denied is that they presented no market evidence to support their claim that the Town's methodology resulted in disproportionate assessments and in fact that the Town's evidence of subsequent sales indicate that the assessments are

proportional relative to market value. While exploring the Town's assessment methodology may be helpful in understanding how market data was analyzed, the critical test of proportional assessment is whether it's relative to market value. In this case, the board finds that the Taxpayers presented no evidence to show that the assessment was not proportional.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within twenty (20) 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 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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald and Nancy Damm and John and Barbara Zerjav, Taxpayers; and Chairman, Selectmen of Washington.

Dated: July 28, 1994

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Valerie B. Lanigan, Clerk

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REHEARING ORDER

On August 15, 1994 the Taxpayers filed a Motion for Rehearing (Motion).

The board denies the Motion because the board did not overlook or miscomprehend the facts or the law as argued by the Taxpayers. The board clarifies its decision of July 28, 1994 (decision) by responding further to the issues raised in the Motion.

The Taxpayers made a general request that the chairman of the board review the Motion. The board rules RSA 71-B:6 makes no distinction between the chair and other members of the board, but only states that the board must sit as a quorum of two in all RSA 76:16-a matters. Therefore, the two members who heard the appeal reviewed the Motion.

The following paragraphs are numbered to correspond with the Motion's paragraphs.

(1) The board was aware of and considered the Taxpayers' arguments that the Town selectively reassessed various waterfront properties. However, the board

did not find the Town's assessing methodology resulted in the Taxpayers' assessments being disproportionate. The appeal was filed pursuant to RSA 76:16 and 16-a, which is an appeal of an individual's assessment, not a petition for a general reassessment pursuant to RSA 71-B:16 IV. The Taxpayers' burden is to show that their assessments are disproportionate to the general level of assessment within the community. The board found the Taxpayers did not do that. On the contrary, the board found that the Town had complied with the requirements of RSA 75:8 by correcting underassessments of waterfront property when it came to the Selectmen's attention that the sales used to form the basis of the waterfront assessments had been from an earlier time period. This correction is entirely appropriate as long as the revisions bring the waterfront properties back to the general level of assessment within the community.

(2) The Taxpayers did not meet their burden of showing the transaction of Lot L-2 for $60,000 in September of 1987 was not a market value transaction. The board received testimony and evidence that few properties on the waterfront sold in the traditional marketing channels due to the high demand and desirability of waterfront properties and the lack of property available for sale. Thus, simply because a lot was transferred without a broker and sold for twice its purchase price the previous year does not necessarily make it a non-market value sale. If such private transfers are the norm, which they appear to be based on the testimony, then such sales may reflect the market.

(3) Market data subsequent to an appeal date is available to both parties to present their cases. Market data both before and after the appeal date is

germane provided appropriate adjustments are made for changes in the market. While it is true the board has the advantage of hindsight that taxpayers and assessors do not have as of the date of the appeal, the board does consider and weigh what facts were public knowledge as of the date of assessment to determine whether the assessment is proper. In short, the board found no market evidence either prior to or subsequent to the assessment date to support the Taxpayers' claim that the Town's methodology resulted in a disproportionate assessment of their property.

(4) The board is aware that lots around Ashuelot Lake are not identical. However, the board's finding in the decision was limited to the singular issue that the lots were not so irregular that the Town's averaging method versus a more common and acceptable triangulation calculation resulted in values that did not relate to market value. The board did not intend to make light of the tax significance of a several thousand dollar difference in an assessment. However, the board must always focus on whether an assessment is reasonable or excessive. There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which when adjusted to the municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

Further, the Taxpayers argued that the board in the decision used incorrect adjustment factors for the excess frontage and undeveloped factors. The board derived the factors from the Department of Revenue Administration 1988 appraisal manual used by the Town during its reassessment. The factors vary slightly because the figured frontage adjustment for 135 feet in the

manual is slightly lower than the adjustment factor for a figured frontage of 128 feet.

(5) The board's decision on page 4 states: "The Taxpayer stated he would not consider selling their property for their recommended assessment of approximately $101,000." Upon review of the recording of the hearing, the board still concludes the Taxpayer would not have sold the property for the value they argued was proper for an assessment.

Pertinent portions of the record are as follows.

Board question: "Would you have sold your property as of April 1, 1990 for $101,825 respectively if you had a purchaser?

Taxpayer: Probably not. I probably would have tried to sell it for more. But I want to answer that question if I can. Everyone tries to sell their property for more...

Board question: I guess the question would be on April 1, 1990 if you were to sell your house, would you have sold it for $101,800?

Taxpayer: No, because I never plan on selling the house.

Board: I understand that...it's a hypothetical question.

Taxpayer: It's hard for me to answer that question for you.

Board: That is the question the board has to ask. What would a willing buyer and a willing seller think your house was worth on April 1, 1990?

Taxpayer: Right, but my point here is that this also has to be compared to how everyone else was treated as well..."

(6) The 1.23 acres listed in the decision is a clerical error and is purely descriptive and does not affect the merits of the decision or the estimation of the proper assessment. The 1.23 acre figure was taken from an earlier assessment record card for the property which was subsequently changed to .80 acres.

Further, the Taxpayers' clarification that the Town reassessed all waterfront property in Lake Ashuelot Estates rather than just lakefront property does not change the conclusion of the decision, because, as the board has already stated, it is proper for a municipality to correct assessments pursuant to RSA 75:8.

In summary, the Taxpayers have not presented any evidence at the hearing or in the Motion to support their claim the Town's methodology resulted in their assessments being disproportionate.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Paul B. Franklin, Member

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to Donald and Nancy Damm and John and Barbara Zerjav, Taxpayers; and Chairman, Selectmen of Washington.

Date: September 16, 1994

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Valerie B. Lanigan, Clerk