

Anthony J. and Barbara A. DeFruscio

v.

Town of Deerfield

Docket No.: 10381-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$134,400 (land, \$114,900; buildings, \$19,500) on a lot with a home on Pleasant Lake (the Property). The Taxpayers and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. The board has reviewed the written submittals and issues the following decision. 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the per-square-foot assessment on the land was excessive when compared to the land assessment on lot 39 (the Taxpayers submitted information comparing lot 29 and lot 39, which will not be reiterated here); and
- (2) the Town's methodology was flawed.

The Town argued the assessment was proper because:

- (1) four comparables indicated the assessment was in line with other assessments;
- (2) it was fair and equitable; and
- (3) based on sales studies, the Town found that smaller lots have a higher per-square-foot value than larger lots.

The board's inspector reviewed the assessment-record card and the parties' briefs and filed a report with the board (copy enclosed). In this case, the inspector only reviewed the file; he did not perform an on-site inspection. This report concluded the assessment was proper as adjusted (copy attached). Note: The inspector's report is not an appraisal. The board reviews the report and treats the report as it would other evidence, giving it the weight it deserves. Thus, the board may accept or reject the inspector's recommendation.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden of proof. The Taxpayers' appeal focused on a comparison of the Property with lot 39. Unfortunately, a comparison of one assessment to another does not necessarily show disproportionality. For example, reviewing the Taxpayers' evidence might lead to the conclusion that lot 39 is underassessed, not that the Property is overassessed. Additionally, the Town submitted the assessments on lots that were closer to the Property, and those

assessments showed a consistent methodology was used in assessing the lots.

The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of Bedford, 122 N.H. 187, 189-90 (1982).

Concerning the higher per-square-foot value on the smaller lots, differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

Finally, 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 Town. 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.

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

The Taxpayers in their rebuttal brief argued the board should not accept the Town's brief because the Town's brief was filed too late. Even if this were true it would not change the result here because the Taxpayers failed to carry their burden. If a taxpayer fails to carry his/her burden, it does not make any difference whether the town submits a brief or not because the burden is not on the town.

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3. The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

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 Anthony J. & Barbara A. DeFruscio, Taxpayers; and Chairman, Selectmen of Deerfield.

Dated: July 21, 1993
0008/0005

Melanie J. Ekstrom, Deputy Clerk

Anthony J. Defruscio and Barbara A. Defruscio

v.

Town of Deerfield

Docket No. 10381-90

ORDER

This order responds to the "Taxpayers'" June 25, 1993 rehearing motion.

This order will not address the additional information the Taxpayers included in that letter but did not submit at the hearing. This order will also not address the Taxpayers' July 5, 1993 letter or July 20, 1993 letter. The additional material will not be considered because the board generally does not accept new information after a hearing has been held. The two additional letters will not be addressed because the board only accepts one rehearing motion for each file. For the reasons stated below, except for the typographical correction, the motion is denied.

The board corrects the first paragraph on page one, which erroneously stated the property was on Pleasant Lake when the property is located on Northwood Lake.

Concerning the rehearing motion, the board denies the motion because the Taxpayers did not raise any error in fact or in law. See RSA 541:3, 4 (rehearing motions must state good cause for finding an error). The reason for the denial of the rehearing motion is that the Taxpayers simply failed to

carry their burden and prove disproportionality. The motion could not resurrect the Taxpayers' failure to carry their burden at the hearing.

The Taxpayers raised several other issues in their rehearing motion that will be discussed below with the Taxpayers' issue stated first and the board's response stated thereafter.

1) History of Taxpayers' communications with the "Town."

The information concerning the Taxpayers' communications with the Town is irrelevant. The only question before the board was whether the Taxpayers were disproportionately assessed, and we concluded the Taxpayers failed to prove they were disproportionately assessed.

2) Taxpayers were unable to review the Town's methodology.

The Taxpayers have raised questions about the Town's methodology. The Taxpayers are too late in raising this as an issue. If the Taxpayers were unable to review the Town's methodology, they should have either presented the Town with a formal discovery request or questioned the Town at the hearing. It is now too late to reopen the appeal to allow the Taxpayers to perform this review.

3) Issue concerning the size of the house.

The Taxpayers' raising of this issue, following the hearing, is demonstrative of what is wrong with the Taxpayers' rehearing motion. The Taxpayers at the hearing, stated they were not contesting the assessment on the house but were only contesting the assessment on the land. No arguments were presented at the hearing concerning the house, and the board will not consider them now.

4) Town's default.

The Taxpayers' argument concerning the Town's default is without merit because a formal default order was not issued on this file. Even if the Town was in technical default, the Town was not placed in default by the board, and therefore, none of the default procedures applied.

5) Argument concerning the waterfront.

The board was unable to decipher the Taxpayers' argument number three on page three of the Taxpayers' June 25, 1993 letter.

Having denied the Taxpayers' rehearing motion, the board can no longer entertain any motions on this file, and it will not respond to any further communications. If the Taxpayers are dissatisfied with the board's decision on the rehearing motion, they may appeal, pursuant to RSA 541:6, to the supreme court within thirty days of the clerk's date on this order.

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 order has been mailed this date, postage prepaid, to Anthony J. & Barbara A. DeFruscio, taxpayers; and the Chairman, Selectmen of Deerfield.

Melanie J. Ekstrom, Deputy Clerk

Dated:

0009 for 0004