

Constance L. Ambrose

v.

Town of Deerfield

Docket No.: 10545-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$151,900 (land, \$100,100; buildings, \$51,800) on a 10,000 square-foot lot with a house on Pleasant Lake (the Property). The Taxpayer 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 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 failed to carry this burden and prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the lot is small (101' x 100') with wet area in the rear;
- (2) the Property is located on a busy road;

(3) it is higher when compared to two nearby properties -- Eleanor Ambrose and Mary Aucella; and

(4) the taxes are excessive.

The Town argued the assessment was proper because:

(1) it was consistent with other assessments in the area as shown on the submitted spreadsheet; and

(2) one of the Taxpayer's comparables -- Eleanor Ambrose -- was incorrectly assessed in 1990 and that assessment has been corrected, and the other comparable -- Mary Aucella -- is not comparable since it is vacant and would require going through numerous approval processes to be developed whereas the Property is developed and its use grandfathered.

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 should be \$144,300. The inspector gave a -5% depreciation to address cars that park in the Taxpayer's yard. 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.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry her burden, and therefore the appeal is denied.

The Taxpayer's main argument was based on comparing the assessment of two properties. As discussed above, the Aucella property is not a comparable property since it is vacant and would require seeking numerous approvals to develop. Additionally, the Ambrose property's assessment was in error and thus it could not be used to show disproportionality.

The board finds the Taxpayer's Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's 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.

The Taxpayer did not present any credible evidence of the Property's

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fair market value. To carry this burden, the Taxpayer 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.

The Taxpayer complained about the high amount of taxes she 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).

The board did not adopt the inspector's report because the Town had already adjusted the assessment to address the Taxpayer's argument about parked cars, and there was no evidence that adjustment was not sufficient.

We also find the Town submitted other assessment data to show the consistent methodology used in the Town. The Town testified the Property's

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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).

The Town failed to submit any sales to support the assessment. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

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

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I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Constance L. Ambrose, Taxpayer; and Chairman, Selectmen of Deerfield.

Dated: June 21, 1993

0008/0005

Melanie J. Ekstrom, Deputy Clerk