

Robert A. Van Schelt

v.

Town of Deerfield

Docket No.: 10592-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$152,800 (land, \$121,300; buildings, \$31,500) on a .94-acre lot with two camps and two sheds (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) even though the state directed the Town to assess the Property as one parcel and the Taxpayer notified the Town and the MMC appraiser of this, the Property is

assessed with two building lots with 50-foot lake frontage each;

(2) a neighboring lot (Lot 4) is 28% larger with 128 feet of water frontage and was assessed at only \$150,200, and Lot 2 has 1,000 feet of water frontage with 10 acres and was assessed at only \$181,000;

(3) the Property, being only 1/10th the size of Lot 2, should either be assessed at only \$18,090, or Lot 2 should be assessed 10 times the Property's assessment, or \$2,324,000;

(4) the drainage ditch on route 107 has a negative impact on the Property's value, and the abutting property built a garage close to the Property's boundary line;

(5) property values have steadily declined -- a waterfront, year-round home is listed for only \$59,500, and a 63-acre lot sold for \$199,900; and

(6) the building straddles the lot line, and the Property is seasonal.

The Town argued the assessment was proper because:

(1) four comparables indicated the assessment was in line with other assessments and the assessment was fair and equitable;

(2) based on sales studies, the Town found that smaller lots have a higher per-square-foot value than larger lots; and

(3) the Property's assessment is well within range of comparable properties.

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 proper assessment should be \$152,800 (land, \$121,300; buildings, \$31,500). The inspector recommended the Town's adjusted 1991 assessment also be applied to the 1990 tax year. 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 prove the assessment was disproportional.

The Taxpayer asked the board to compare his assessment with the assessment on two other properties. After reviewing the assessments on the comparable properties, the board finds no error in the Property's assessment. Specifically, the \$150,200 land assessment on Lot 4 is almost \$30,000 more than the assessment on the Property. Lot 2, the 10-acre lot, is not a valid comparison given its size and the fact it is an undeveloped lot.

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.

The Taxpayer also presented two sales to show that the market has been declining. The Taxpayer argued the assessment should be reduced because the market for the Property has been declining. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayer needs to make a showing that the Property has changed in value to a

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greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove his Property is disproportionately assessed. The Taxpayer did not present any credible evidence of the Property's 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 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).

The Taxpayer's original assessment was \$254,100. To the extent abatement checks have not been issued based on the \$152,800 value, the Town shall refund the taxes paid with six percent interest from the date the taxes were paid to the refund date.

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

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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 Robert A. Van Schelt, Taxpayer; and Chairman, Selectmen of Deerfield.

Dated: June 21, 1993

0008/005

Melanie J. Ekstrom, Deputy Clerk

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ORDER

The Taxpayer in the above captioned matter filed a motion for a reconsideration/rehearing dated July 9, 1993, which was received by the board of tax and land appeals on July 12, 1993.

Although the original 1990 assessment was \$254,100, the Town reduced the assessment to \$152,800 prior to the date of hearing.

The board finds no compelling evidence or arguments by the Taxpayer in his motion not previously presented and rules motion for rehearing denied.

Further, the board orders the Town to abate any taxes paid on the value in excess of \$152,800 at six percent interest from the date of payment to the date of refund.

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The abatement check shall be mailed by the Town to the Taxpayer and postmarked no later than August 20, 1993.

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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 order has been mailed this date, postage prepaid, to Robert A. Van Schelt, Taxpayer; and Chairman, Selectmen of Deerfield.

Dated:
0008

Lynn M. Wheeler, Deputy Clerk