

**Francis J. and Annette F. Stevens**

**v.**

**Town of Wolfeboro**

**Docket No.: 10686-90PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$77,700 on a mobile home (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 their burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) the mobilehome park influence factor (MHPIF) is incorrect because it relates to the land on which the mobile home is located not owned by the Taxpayers;
- (2) the MHPIF is \$10,000 per lot regardless of the size and style of the mobile home;
- (3) the Taxpayers' garage received a 1.5 condition factor while other garages not in Birch Hill Estates (Park) received a factor of 1.00 or less;
- (4) the MHPIF should be entirely removed and the garage should be assessed at \$11.31 per square foot and reduced by a condition factor of .50;

Page 2

Stevens v. Town of Wolfeboro

Docket No.: 10686-90PT

(5) if a MHPIF is found to be proper, there should be a different value assigned based on differing locations within the Park; and

(6) the proper assessment should be \$61,637 by totally deleting the MHPIF and reducing the garage value to \$2,737.

The Town argued the assessment was proper because:

(1) the MHPIF of \$10,000 reflects the market factors external to the unit, such as location, that affect value;

(2) The MHPIF resulted from analyzing sales at the time of the reassessment which indicated the units were selling more than cost; and

(3) sales also indicated garages within the Park contributed more in market value than their cost and thus a 1.50 factor was applied; this factor recognized the greater utility of the garages as accessory storage buildings to mobile homes without basements.

#### 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. The Taxpayers' appeal is based on The Constitution of New Hampshire, Part 2, Article 5, which states in part:

"And further, full power and authority are hereby given and granted to the said general court, from time to time . . . to impose and levy proportional and reasonable assessments, rates and taxes, upon all the inhabitants of, and residents within, the state; and upon all estates within the same . . ."

Stevens v. Town of Wolfeboro

Docket No.: 10686-90PT

and RSA 75:1 (supp) which states:

"Except with respect to open space land appraised pursuant to RSA 79-A:5, and residences appraised pursuant to RSA 75:11, the selectmen shall appraise all taxable property at its full and true value in money as they would appraise the same in payment of a just debt due from a solvent debtor, and shall receive and consider all evidence that may be submitted to them relative to the value of property, the value of which cannot be determined by personal examination."

"The relief to which [the taxpayer] is entitled is to have its property appraised for taxation at the same ratio to its true value as the assessed value of all other taxable estate bears to its true value. Boston & Maine R.R. v. State, 75 N.H. 513, 517; Rollins v. Dover, 93 N.H. 448, 450." Bemis v. Claremont, 98 N.H. 446, 452 (1954). It is well established that the taxpayer has the burden of demonstrating that he is disproportionately assessed. Lexington Realty v. City of Concord, 115 N.H. 131 (1975), Vickerry Realty v. City of Nashua, 116 N.H. 536 (1976), Amsler v. Town of South Hampton, 117 N.H. 504 (1977), Public Service v. Town of Ashland, 117 N.H. 635 (1977), Bedford Development v. Town of Bedford, 122 N.H. 187 (1982), Appeal of Town of Sunapee, 126 N.H. 214 (1985), Appeal of Net Realty Holding, 128 N.H. 795 (1986).

The statutes define land and real estate in RSA 21:21 as:

- I. The words "land," "lands" or "real estate" shall include lands, tenements, and hereditaments, and all rights thereto and interests therein.
- II. Manufactured housing as defined by RSA 674:31 shall be included in the term "real estate." (emphasis added)

Black's Law Dictionary states, with respect to the term "property,":

The word is also commonly used to denote everything which is the subject of ownership, corporeal or incorporeal, tangible or intangible, visible or invisible, real or personal; everything that has an exchangeable value or which goes to make up wealth or estate. It extends to every species and personal property, easements, franchises, and incorporeal hereditaments. (emphasis added)

The Town used a combination of the cost and market approaches to assess the Taxpayers' interest in their property. Based on the Town's testimony, the contributory value of the manufactured home was determined by the cost approach and then subtracted from the actual sales prices. The difference was correlated from the sales within the park to a MHPIF of \$10,000. This difference is attributable to less tangible but nonetheless transferable property rights or interests such as situs or location with any of its associated amenities. The Taxpayers did not submit any evidence to support their argument that different MHPIFs are justified based on different locations within the Park.

Based on the testimony and evidence, the Board finds that the best evidence of the market value of the Taxpayers' property is the sales of similar property within the Park as submitted by the Town. These sales which occurred from 1988 to 1994 indicated double-wide units with garages similar to the Taxpayers' sold from \$71,000 to \$87,750. These sales also indicate the units in the Park have held their value reasonably well relative to the Town's equalization ratios for subsequent years (1991: 102%; 1992: 110%; and 1993: 119%).

Page 5

Stevens v. Town of Wolfeboro

Docket No.: 10686-90PT

Further, the Taxpayers did not submit any market data to support their proposed assessment of \$61,637. To carry their 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 Wolfeboro. 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. In response to a question, the Taxpayers stated they would not have considered selling their Property in 1990 for approximately \$61,000. They further stated they had purchased the Property in 1986 for \$72,000 and have recently listed the Property for \$75,000.

The issues in this case are similar to those raised in Edwin H. and Ruth Arnold v. Town of Epping, Docket No. 5241-88 (Arnold). The board's decision in the Arnold case was appealed to the New Hampshire Supreme Court and was affirmed by the Court without the necessity for a formal decision (copies attached). As in the Arnold appeal, the board finds the methodology of adding market factors to the cost of improvements (whether it be a MHPIF or a multiplier to a garage) to estimate market value is proper as long as the resulting assessments correlate to market sales. In this case, the sales data and the Taxpayers' opinion of the market value of the Property all support the assessment.

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

Page 6

Stevens v. Town of Wolfeboro

Docket No.: 10686-90PT

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 Francis J. and Annette F. Stevens, Taxpayers; and Chairman, Selectmen of Wolfeboro.

Dated: June 22, 1994

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Valerie B. Lanigan, Clerk