

George Ditson

v.

Town of Deerfield

Docket No. 10783-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$87,700 (land, \$48,500; buildings, \$39,200) on Map 13, Lot 25 (4 Brown Road), consisting of 2.5 acres and a house (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.

The Taxpayer argued the assessment was excessive because:

1) the Property is located in close proximity to the town landfill and is also on a street with 50% house trailers;

- 2) the land is valued too high; and
- 3) the Town does not provide sewer, water, streetlights or sidewalks.

The Town argued the assessment was proper because:

- 1) they used six comparable properties within the same proximity as the subject Property;
- 2) the Town found land values ranged from 18¢ to 76¢ per square foot with the average being 49¢. The subject lot is assessed at 45¢ per square foot;
- 3) a spreadsheet shows equitable assessment; and
- 4) the property-record cards for all properties were submitted.

No evidence was originally submitted to document the distance between the subject property and the pollution (landfill), or which properties were involved in a suit in federal court. There was also no evidence presented as to the presence and nature or extent of the alleged pollution. The Town did not acknowledge the presence of pollution on the subject property or neighboring properties.

The board's inspector, reviewed the assessment-record card, reviewed 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 that the assessment was proper and warranted no adjustment.

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.

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

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Pursuant to a board order, the parties filed information concerning the proximity of the landfill and whether any contamination existed. There was nothing in the parties' original or subsequent filings that proved a reduction was required. First, the Property is some distance from the landfill. Second, the Property is not contaminated, and there was no evidence filed, other than the Taxpayer's assertion, to show the landfill would, with some certainty, contaminate the Property. Third, the Taxpayer did not submit any market data to show the effect of being near the landfill.

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 information concerning the 1992 listing prices for nearby lots and the other sales information were insufficient because the appeal is for the tax year 1990 and because no direct comparison was made between the Property and the other properties. Every property is different, and the board cannot make conclusions based on evidence that does not compare the different properties.

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

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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 George Ditson, Taxpayer; and the Chairman, Selectmen of Deerfield.

Melanie J. Ekstrom, Deputy Clerk

Date: June 17, 1993

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