

Gary and Debra Chicoine

v.

Town of Weare

Docket No.: 10846-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$253,400 (land \$43,300; building \$210,100) on a 4.9-acre lot with a house (the Property). The Taxpayers also own, but did not appeal, Lot 411 with a \$221,600 assessment. 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) taxes have increased over \$2,000 in one year;
 - 2) the Property was listed for sale in May, 1992 for \$200,000 with no buyers;
- and

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3) a May 7, 1991 appraisal estimated a \$210,000 value, and values have consistently declined since that time.

The Town argued the assessment was proper because:

1) 367 sales between April 1, 1988, and April 1, 1990, were used to set the values for the 1990 revaluation, and the same methodology was used throughout the Town;

2) the Property includes a rental apartment with above-average quality construction;

3) the Property is at the upper end of the real estate market;

4) only one of the Taxpayers' appraiser's comparables was in the Town, and the appraiser's \$11,500 contributory value for the apartment was inadequate; and

5) using a \$33,000 contributory value for the apartment increases the Taxpayer's appraisal to \$231,500, which when time adjusted to 1990, results in \$252,300 and this supports the assessment.

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 \$242,850. The inspector made an adjustment to the apartment over the garage. 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.

The board did not rely upon the inspector's report because of his limited review of the Property and its assessment and because the Taxpayers evidence was insufficient to support lowering the assessment.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to carry their burden. The Taxpayers' main evidence was their 1991, \$210,000 appraisal. The board concludes that appraisal does not carry the Taxpayers' burden for several reasons:

- 1) the appraisal should have been time adjusted to April 1, 1990, which, using the change in the equalization ratio, would have resulted in an approximate \$230,000 appraised value;
- 2) the board questions whether the appraiser gave adequate consideration to the value added by the apartment above the garage, especially given the income the apartment can generate;
- 3) the Taxpayers did not submit the full appraisal report, specifically, the Taxpayers did not submit any photographs or property sketches and they did not submit the addendum referenced in the appraisal that explained how the appraiser calculated the value of the garage apartment; and
- 4) the appraiser did not submit sufficient data concerning the added value for the in-ground pool.

Based on the above deficiencies, the board was unable to rely upon the appraisal.

In terms of the Taxpayers' listing of the Property, they failed to

submit sufficient information about the marketing of the Property, which

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information should have included how the Property was being marketed, what the Property was being marketed for, and how the marketing price was determined.

Finally, concerning the Taxpayers' claim of a high tax burden, the amount of property taxes paid by the Taxpayers 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 Taxpayers 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).

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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Gary and Debra Chicoine, Taxpayers; and Chairman, Selectmen of Weare.

Dated: October 26, 1993

Lynn M. Wheeler, Deputy Clerk

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