

Richard C. and Robert A. Backus

v.

Town of Weare

Docket No.: 10876-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$91,100 (land \$55,000; buildings \$36,100) on a .35-acre lot with a camp (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 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 this burden and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

(1) the Property is on a road not maintained by the Town, the camp is not winterized and has had no renovations since the purchase, and water must be brought in from the pond;

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- (2) the Property was purchased in 1983 for only \$37,000 and would never sell for the assessed value;
- (3) a property with more land and shore frontage sold in 1990 for \$62,500;
- (4) there were errors on the assessment-record card, i.e., the walls are not drywall and the camp was built in 1966;
- (5) land values around the pond were inconsistent, i.e., a .46-acre lot had a \$60,500 land assessment, and a .32-acre lot had a \$16,000 land assessment;
- (6) the taxes have doubled and the cottage value increased 146% in eight years; and
- (7) an April 25, 1992 appraisal estimated a \$73,500 value.

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 used for the 1990 revaluation;
- (2) the same methodology was used throughout the Town;
- (3) the assessment was already adjusted to address the errors on the assessment-record card;
- (4) the appraiser's comparables were not comparable because one was a distress sale and the other was an atypically low sale and was not used as a benchmark to set the revaluation standards;
- (5) the appraiser's value was not time adjusted to April 1, 1990;
- (6) the \$62,500 sale was not comparable to the Property; and
- (7) smaller lots have greater utility and, therefore, greater per-acre assessment prices.

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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 was proper. 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.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden of proof. The Taxpayers' arguments concerning the condition and attributes of the Property do not carry any weight unless the Taxpayers are able to evaluate how those factors affect value and demonstrate the assessment was incorrect. In other words, it is insufficient for taxpayers to simply say the property has the following factors without stating how those factors would result in a lower assessment. Similarly, the Taxpayers' 1983 purchase price has no relevancy to a 1990 market value.

Concerning the increase in assessment, increases from past assessments are not evidence that a taxpayer's property is disproportionately assessed compared to that of other properties in general in the taxing district in a given year. See Appeal of Sunapee, 126 N.H. 214 (1985). The Taxpayers also complained about the high amount of taxes they must pay. 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.,

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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).

Concerning the Taxpayers' argument concerning differing land values, 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. Additionally, land values vary based on topography and other factors. Thus, it is insufficient to simply state that there is an inconsistency. The board would be surprised if all properties were assessed the same since property values differ in relationship to the size, topography and quality of the land.

Finally, the Taxpayers' April, 1993, \$73,500 appraisal actually supports the 1990 assessment. Using the department of revenue administration's change in equalization ratio from 1990 to 1992 results in an \$89,670 time-trended appraised value ($\$73,500 \times 1.22 = \$89,670$). Another way to look at it would be to divide the \$91,100 assessment by the 1992, 1.22 equalization ratio,

which indicates an equalized value of \$74,675, which is consistent with the \$73,500 appraisal. Both of these calculations demonstrate that the appraisal supports the assessment.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard C. Backus and Robert A. Backus, Taxpayers; and Chairman, Selectmen of Weare.

Dated: October 26, 1993

Lynn M. Wheeler, Deputy Clerk

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