

John R. Kelly

v.

Town of Weare

Docket No.: 10891-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$90,600 (land \$58,900; building \$31,700) on Lot 24, an .18-acre lot with a camp (the Property). The Taxpayer also owns, but did not appeal, Lot 23, which abuts the appealed Property and the road access. The Taxpayer and the Town waived a hearing and agreed to allow the board to decide the appeal on written submittals. After reviewing all Lake Horace appeals, the board decided to hold a hearing to gather further information. The Taxpayer failed to appear, but consistent with our rule, TAX 102.03(g), the Taxpayer was not defaulted. This decision is based on evidence presented to the board.

The board has reviewed the written submittals and the evidence from the hearing 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);

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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) the assessment increased 4.5 percent in one year's time;
- (2) the Property is located on a road not maintained by the Town, and the road is impassable six months out of the year;
- (3) the Property is landlocked and the only access to the road is by trespassing over an abutting lot; and
- (4) the assessment should be \$37,000.

At the start of the hearings, the Town explained the assessment methodology that was applied to all Town properties and the detail of that methodology as applied to Lake Horace properties. The Town submitted a sales book with photographs and sales and assessment information. The Town argued the assessment was proper because:

- (1) 367 sales that occurred between April 1, 1988 and April 1, 1990 were used to set the values for the 1990 revaluation, 10 of which were in the Lake Horace area and on private, unmaintained roads;
- (2) the Taxpayer does not trespass over an abutting lot to access the road, i.e., the abutting lot is owned by the Taxpayer and the lot provides legal access to the waterfront lot; and
- (3) the assessment was based on comparable market sales.

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 assessments were 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 Taxpayer failed to prove he was disproportionally assessed. In viewing the appealed Property, the board is required to look at the Taxpayer's entire estate. While the appealed Property may not be located on a road, the Taxpayer's other lot is located on a road, albeit a road not maintained by the Town. The Town stated that it viewed the Property and the nonappealed lot as one estate even though separately assessed.

Concerning the Taxpayer's arguments about increases in the assessment, a greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property. Increases from past assessments are not evidence that a taxpayer's property is disproportionally 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 Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer should have made a
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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 submitted sufficient information of sales on roads not maintained by the Town, and the Town submitted sufficient evidence to show that a consistent methodology was used throughout the Town based on sales.

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

Paul B. Franklin, Member

Concurred, Unavailable for Signature
Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to John R. Kelly, Taxpayer; and Chairman, Selectmen of Weare.

Dated: September 14, 1993 _____

Valerie B. Lanigan, Clerk

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