

Taylor H. Loop

v.

Town of Salisbury

Docket No.: 8812-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$64,950 (land \$61,550; buildings \$3,400) on Lot 15-1, a 98-acre lot with a camp;

\$174,100 (land \$65,600; buildings \$108,500) on Lot 15-5, a 43.8-acre lot with a house;

\$40,450 (land \$37,000; buildings \$3,450) on Lot 15-5.1, an 18-acre lot with a shed; and

\$9,450 on Lot 15-7, a vacant, 14-acre lot (the Properties).

For the reasons stated below, the appeal for abatements is denied.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden and prove disproportionality.

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The Taxpayer argued the assessments were excessive because:

- 1) there are no comparables for the Properties;
- 2) the Properties are separated from the Town, requiring traveling through Warner to get to the Town;
- 3) the Taxpayer's children would have to be bused a significant distance over back roads to go to school in the Town, (The Taxpayer stated he rented a house in Warner so the children could go to a Warner school. He now sends his children to private school in Concord.);
- 4) in 1986, part of the road on which the Properties are located was reclassified to a class VI road, adversely affecting the Properties' value by \$100,000. (The report supporting that conclusion was not admitted because the Taxpayer did not comply with board rules TAX 201.34, 35.); and
- 5) the taxes increased because of the revaluation.

The Taxpayer, because of the expense incurred to transport his children to schools outside of the Town, asked the board to abate all school taxes he had paid for the past several years.

The Town argued the assessment was proper because:

- 1) it was calculated during the Town-wide revaluation and it was based on sales that occurred near the revaluation date;
- 2) the Town properly adjusted the assessments based on locations and type of road frontage, i.e., class V or class VI; and
- 3) the Taxpayer did not present any market evidence that the Properties were disproportionately assessed.

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The Town also asked the board to order the Taxpayer to pay the Town's appeal costs because the appeal was frivolous, being based on increased taxes and not market data.

Board's Rulings

Based on the evidence we find the Taxpayer failed to show the assessments were disproportionate.

The Town based the assessment on market data derived during the revaluation, making adjustments for the property-specific problems such as location and type of road frontage.

As pointed out by the Town, the Taxpayer did not present any credible evidence of the Properties' fair market value. To carry this burden, the Taxpayer should have made a showing of the Properties' fair market value. This value would then have been compared to the Properties' 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 Taxpayer's main argument concerned the effect location has on getting his children to school and the cost he incurred to send them to other schools. The board does not have jurisdiction to abate such school taxes. The board only has jurisdiction to abate taxes based on disproportionate assessment, which the board has found the Taxpayer has not shown.

Concerning the argument that the Properties received no services, lack of municipal services is not necessarily evidence of disproportionality. As the basis of

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assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

The Taxpayer complained about the high amount of taxes he must pay. The amount of property taxes paid by the Taxpayer 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 Properties were overassessed, resulting in the Taxpayer 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).

We find the Taxpayer failed to prove the Properties' assessments were disproportional. We also find the Town supported the Properties' assessments.

We deny the Town's request for costs, finding that while the Taxpayer did not have sufficient evidence, his appeal was not abuse of the appeals process.

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 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party

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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

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 Taylor H. Loop, Taxpayer; and Chairman, Selectmen of Salisbury.

Dated: May 18, 1994

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Valerie B. Lanigan, Clerk