

Alfred G. Stauble

v.

Town of Mason

Docket No.: 8900-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$90,300 (land \$12,350 (with current use); buildings \$77,950) on an 18.51-acre lot with a house and two greenhouses (the Property). 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to meet his burden of proof.

The Taxpayer was present when the board opened the hearings scheduled for 9:00 a.m.. Mr. Stauble had been notified, in writing, that his case would be heard third out of six cases scheduled for that day.

During the board's preliminary procedural remarks for the parties present, the Taxpayer interjected and stated he wanted his appeal to be heard first because he had signed in first and he was a business man and had other

things to do. The board explained his case would be heard in the order scheduled in the Taxpayer's notice of hearing and that according to its rules, the Taxpayer would not be defaulted if he felt he could not wait for his case to be reached. His written briefs (with photos) previously submitted would be marked as exhibits and considered in the board's deliberations. Mr. Stauble elected to leave the hearing at 9:21 a.m.. His case was opened on the record at 11:37 a.m. and three Taxpayer exhibits were marked: Exhibit #1, two photos of subject property; Exhibit #2, basis of Taxpayer's appeal, two typewritten pages dated August 20, 1991; and Exhibit #3, Letter to board from Taxpayer, eight typewritten pages dated July 20, 1993.

The Taxpayer argued:

- 1) that a family of five with no voting rights and a tax obligation is treated disproportionately compared with another family of five "with the power of five votes, with the same tax burden";
- 2) that "if as a taxpayer I am not responsible for the production of a school age child, then I should not be taxed disproportionately for the existence of another taxpayer's obligation";
- 3) that the Town used a check sheet of house characteristics. "There are approximately twelve checks which are incorrect or disputable";
- 4) that because structures differ in content therefore, "the Town should be instructed to tax each human domicile in that town by exactly the same dollar amount, for a minimum of three years ...";
- 5) that the Town of Mason is "taxing me for a greenhouse, used as a non-profit

activity. ...This greenhouse taxation is a despicable, vile and odious act for which the perpetrators would have been shot in the American Revolution of

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1775. This represents an inequity of taxation without representation and is an example of disproportionate share of the tax burden for this Taxpayer"; and
6) that both greenhouses are approximately 14 years old and therefore should be fully depreciated after 10 years with zero value.

The Town was represented by Compton E. French, appraiser for the Town. Mr. French testified that:

- 1) he inspected the exterior of the property on January 22, 1991;
- 2) the glass and aluminum greenhouses under appeal are listed as being 10' x 34' and 14' x 16' (the Taxpayer did not dispute these figures);
- 3) a letter dated February 5, 1991 was sent by the Town to the Taxpayer requesting confirmation of specific additional physical information about the greenhouses (heated or non-heated, cement or dirt floors, running water in each, exterior measurements). The Taxpayer failed to respond to the Town's request;
- 4) the appraiser called the Taxpayer's Massachusetts office on several occasions to arrange an interior inspection of the house and greenhouses. The Taxpayer was always "unavailable" and no interior inspection was possible because of the Taxpayer's lack of cooperation; and
- 5) the Town gave the greenhouses 15% depreciation for physical and 15% functional in 1984.

Board Rulings

The board rules that the Town's 1990 assessment is reasonable given the

absence of any cogent, cohesive or convincing evidence produced by the Taxpayer to the contrary. The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer

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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.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). However, the existing assessment process allocates the total value between land value and building value.

Lack of municipal services is not necessarily evidence of disproportionality. As the basis of 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 raised concerns about certain errors in the assessment. However, the Taxpayer did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of

valuation whose joint effect is not injurious to the appellant." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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

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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

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alfred G. Stauble, Taxpayer; and Chairman, Selectmen of Mason.

Dated: December 15, 1993

Valerie B. Lanigan, Clerk

A. G. Stauble

v.

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ORDER

The Board of Tax and Land Appeals received a motion for reconsideration from the Taxpayer, dated December 15, 1993.

The Taxpayer bases his appeal "solely on depreciation." Referring exclusively to the two greenhouses on the subject property, the Taxpayer states, "15% depreciation in 1984 results in 100% depreciation in 1993. This is the motion for reconsideration and was the only consideration for the appeal."

The Taxpayer failed to address the total fair market value issue of the entire residential property (land and buildings), choosing instead to focus entirely on one relatively small component of the total assessment. In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

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The Board finds that the Taxpayer does not offer to submit any new evidence which was not presented at the hearing nor to submit any evidence that existed but was unavailable at the time of the hearing. The Board reaffirms its Decision of December 14, 1993 which adequately addressed the Board's findings and rulings.

Motion denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

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Date:

Valerie B. Lanigan, Clerk

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