

Mark F. & Elizabeth A. Roth

v.

Town of Salem

Docket No.: 8978-90-PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$163,000 (land \$26,000; buildings \$137,000) on Map 16, Lot 10345 (the Property). 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 grade factor on the house was higher than the grade on comparables of similar or better quality (The Taxpayers submitted a packet to support this argument.);
- (2) there were errors on the assessment card;

(3) the Property was worth \$380,000, which would equate to a \$148,200 assessment; and

(4) the comparables in the Town's appraisal were not comparable to the Property and some of the adjustments were not correct.

The Taxpayers stated the total Property cost was \$427,000--the land bought for \$90,000 in 1987 and the house and site improvements built for \$337,000 in 1989.

The Town argued the assessment was proper because:

- (1) an appraisal estimated a \$420,000 value;
- (2) the Property's design increases the value, especially when compared to capes or gambrels;
- (3) the assessment was consistent with similar types of houses in terms of design and appeal; and
- (4) the Taxpayers' cost equated with the Property's value.

Board's Rulings

Based on the evidence, the board finds the Taxpayers did not carry their burden of proof and did not show the assessment was disproportional.

The Taxpayers' main argument dealt with the grade differential. The Taxpayers argued the 1.49 grade differential on the Property exceeded the grade differential on other similar homes in the same development and built by the same builder. The board does not accept this as a basis for granting an abatement for several reasons. First, the board's focus is on the Property's market value and how that market value relates to the assessment and the general level of assessment in the Town. Thus, focusing on one factor used in arriving at the assessment is not

is proportional. Second, this home is a high-quality home. The board has not viewed the Property and the board was not given any interior photographs. However, based on the exterior photographs and the testimony, the grade factor does not appear to be unreasonable. Third, the Taxpayers' comparison to other properties is insufficient to carry the burden because the board focuses on the overall values placed on those properties not a single grade factor. The Taxpayers raised concerns about certain errors in the assessment. However, the Taxpayers did not show if these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

The Taxpayers did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayers 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.

Finally, when the assessment is equalized by the department of revenue administration's 39% equalization ratio, the Property has an equalized value of \$417,950. The Taxpayers stated they purchased the land in 1987 for \$90,000 and the site and building costs were \$337,000, totaling \$427,000 as of April, 1989. Admittedly, the assessment date was one year later, but the Taxpayers' costs for the Property support the equalized value.

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 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 Mark F. & Elizabeth A. Roth, Taxpayers; and the Chairman, Selectmen of Salem.

Dated: July 20, 1994

Valerie B. Lanigan, Clerk

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