

Kevin K. and Gail J. Kenney

v.

Town of North Hampton

Docket No.: 9437-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$266,600 (land \$81,500; buildings \$185,100) on a 2.1-acre lot with a house (the Property). The Taxpayers 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 201.04(e); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because:

- 1) based upon recent comparable sales, the fair market value of the Property is \$331,815;
- 2) the Property is 10% smaller than comparable lots;

- 3) Bradley Lane property is overvalued compared to the Town at large;
- 4) the assessment-record card has numerous discrepancies; and
- 5) the Town calculated the replacement cost at \$330,980 yet the Taxpayers' insurance has a \$300,000 replacement cost.

The Town argued the assessment was proper because:

- 1) the Taxpayers' four neighborhood comparable sales were not arm's length transactions as they were foreclosure sales;
- 2) the Taxpayers' appendix B is unquantified and not indicative of market value;
- 3) the 1988 sales accurately reflect the neighborhood's value range; and
- 4) the errors on the assessment-record card were corrected.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment. The Town testified the Property's assessment was arrived at using the same methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v Town of Bedford, 122 N.H. 187, 189-90 (1982).

Averaging property values, as done by the taxpayers, does not necessarily prove "disproportionality"; it only proves that the taxpayers' property is assessed more than the average property. Appraisals are not averages; rather they are the correlation of general sales data to the unique characteristics of a specific property.

The board's inspector inspected the property, reviewed the assessment-record card, and filed a report with the board. This report

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concluded there was no change.

The Taxpayer argued the assessment should be reduced because the market for the property has been declining. Evidence of a declining market alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayer needs to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove their property is disproportionately assessed.

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

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.

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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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Kevin K. and Gail J. Kenney, Taxpayers; and Chairman, Selectmen of North Hampton.

Dated: May 5, 1993

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Melanie J. Ekstrom, Deputy Clerk

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ORDER

The Board of Tax and Land Appeals received a motion from the Taxpayers for rehearing/reconsideration of their decision in the above captioned matter dated May 5, 1993.

The appeal was received on May 26, 1993 and is timely filed with the Board.

The Taxpayers continue to base their appeal on the theory that their assessment is in excess of the "higher or lower assessed average home". The Board believes this argument was fully addressed in its original decision.

The Town noted the heavy reliance by the Taxpayers on bank foreclosure sales.

The Board further notes the fact that many of the sales used by the Taxpayers took place in 1991 while the assessment under appeal was based on a sales study to support the last town wide revaluation in 1982. No time trending was performed by the Taxpayers on the 1991 sales to bring them into conformity with the market as it existed in 1982.

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A new revaluation is scheduled for 1994 and the N. H. Department of
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Revenue Administration has been designated to perform the task.

No new evidence was presented by the Taxpayers.

The Board affirms its decision of May 5, 1993 and denies the
Taxpayers' motion for rehearing.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

George Twigg, III,

Chairman

Michele E. LeBrun,

Member

I hereby certify that copies of the within Order have this date been
mailed, postage prepaid, to Kevin K. and Gail J. Kenney, Taxpayers; and the
Chairman, Selectmen of North Hampton.

Date: June 24, 1993
Clerk

Valerie B. Lanigan,

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