Rita R. and Thomas J. Linskey

v.

Town of Deerfield

Docket No.: 9532-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of $97,100 (land, $42,800; building, $54,300) on Map 11, Lot 47 (the Property). The Taxpayers filed two appeal documents: (1) Map II-47, Lot 4-7; and 2) Map 11-47, Lot 11-48. However, the material before the board indicates the Taxpayers own one lot -- Map 11, Lot 47 -- which lot was a consolidation of the two other lots. 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) it overstated the lot size and included land not owned by Taxpayers;

(2) it was disproportional compared to three other properties;

(3) it has increased over time; and

(4) a 1988 market analysis estimated a $95,500 value.

Note: The Taxpayers also argued they had been assessed in past years for land they did not own. The board only has jurisdiction to address 1990.

The Town argued the assessment was proper because:

(1) it was based on the correct lot size; and

(2) it was consistent with the assessments on four other properties.

The board's inspector reviewed the assessment-record card, reviewed 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 assessment was 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 Findings

Based on the evidence, we find the Taxpayers failed to prove their assessment was disproportional.

First, the Taxpayers' assessment history is not relevant to the 1990 assessment. 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).

Second, the Town submitted the two deeds and the consolidation document, which showed the lot as 3/4 acre, and the Property was assessed as such.

Third, the Taxpayers' comparables could not be reviewed because of insufficient data and comparisons. Moreover, the Town's comparables supported the assessment.

Fourth, the Taxpayers did not present any credible evidence of the Property's fair market value. The 1990 market analysis was too remote in time to rely upon. 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. The Taxpayers 1988 $95,500 sales analysis was very time dated without being adjusted to 1990.

While this appeal has been denied, we must comment on the Town's failure to submit any sales to support the assessment. Since the Town was recently revalued, the Town should have submitted sales for the board's consideration. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality.

See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986).

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

_____
Ignatius MacLellan, Esq., Member

_____
Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas J. and Rita R. Linskey, Taxpayers; and Chairman, Selectmen of Deerfield.

Dated: July 15, 1993

_____
Melanie J. Ekstrom, Deputy Clerk

004