

Michael and Nancy Curtin

v.

Town of Northwood

Docket No.: 9878-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$152,300 (land \$58,800; buildings \$93,500) on Map 17B, Lot 7, a .91-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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased on January 16, 1990 for \$105,000; and
- 2) four neighboring comparable homes (three with lake views) were assessed at values much lower than the subject.

The Town argued the assessment was proper because:

- 1) the Taxpayers' comparables had lower assessments but the land components were higher than the Property, and the Property's building quality resulted in the higher assessment;
- 2) the Taxpayers' home is superior to the comparables, e.g., it is a newer home, has more square-foot living area, a full-finished basement, grade R-4 construction, a deck, and plumbing and kitchen extras; and
- 3) ratio studies have confirmed that the assessments in the Town were consistently within range since the 1989 revaluation.

The board's inspector reviewed the assessment-record card and filed a report with the board. This report concluded the assessment was proper and no adjustments were warranted.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property's assessment was disproportional. 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. The Taxpayers offered no evidence to support their contention that the Property was overassessed when compared to four neighboring properties. A review of the photographs submitted by the

Taxpayers and the assessment-record cards for those properties submitted by

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the Town indicates that the subject Property is not overassessed. The Town argued that the Taxpayers have the largest house and is a better grade than the comparables. The Taxpayers showed no evidence of any functional or physical problems on the Property in order for the board to make adjustments.

The board did note that, from the photograph, it appears that comparable number two may be incorrectly graded. However, the underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' assessment because of underassessment on other properties would be analogous to a weights and measure inspector sawing off the yardstick of one tailor to conform with the shortness of the yardsticks of the other two tailors in town rather than having them all conform to the standard yardstick. The courts have held that in measuring tax burden, market value is the proper standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., Id.

The Taxpayers testified the Property's purchase price was \$105,000.

While this is some evidence of the Property's market value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The Taxpayers acknowledged they "got a good deal" on the Property but did not indicate whether the sale was an arm's-length transaction, how long the Property was on the market, if it had been actively advertised, etc.

The Town failed 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

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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

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Michael and Nancy Curtin, Taxpayers; and Chairman, Selectmen of Northwood.

Dated: May 7, 1993

Melanie J. Ekstrom, Deputy Clerk