

Chester A. and Louise R. Fogg

v.

Town of Enfield

Docket No.: 9934-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$18,500 on a 1,742 square-foot lot (Lot 45-26) on Crystal Lake (the Property). The Taxpayers also own a nonwaterfront lot (Lot 45-7) that is across the road from the Property, which was not appealed. 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 was not in fair relation to similar properties;
- 2) the Property has steep topography at the lake;
- 3) the Town used an incorrect lot size;
- 4) some similar lots are not taxed at all; and
- 5) the lake frontage was overassessed.

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The Town argued the assessment was proper because:

- 1) it was arrived at using the same methodology used throughout the Town; and
- 2) it is in line with similar lots.

The board's inspector reviewed the assessments on two abutting lots, comparing the size and depth. He concluded no adjustment was warranted.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional.

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 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). The Town also failed to specifically answer the Taxpayers' concerns.

Nonetheless, we find the Taxpayers failed to prove the Property's assessment was disproportional. Viewing the Taxpayers' entire taxable estate,

i.e., Lot 45-26 and Lot 45-7, we conclude the assessment is proper. See Appeal of Sunapee, 125 N.H. 214, 217 (1985). (The board must consider the Taxpayer's entire estate.) The Taxpayers did not present any credible evidence of the Property's fair market value, especially in conjunction with Lot 45-7. To carry this burden, the Taxpayers should have made a showing of the Property's fair market value in conjunction with Lot 45-7. 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.

Concerning the Taxpayers' argument that some lots were not taxed at all, if true, the Town should correct this error. However, the underassessment or nonassessment of other properties does not prove the overassessment of the

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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 or nonassessment 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.

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

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Chester A. and Louise R. Fogg, Taxpayers; and Chairman, Selectmen of Enfield.

Dated: January 29, 1993

Melanie J. Ekstrom, Deputy Clerk

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