

Donald M. and Medora H. MacMeekin

v.

Town of Enfield

Docket No.: 9990-90

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$118,900 (land - \$99,100; buildings - \$19,800), consisting of a cottage on a 1/8-acre lot on Mascoma Lake (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 granted.

The Taxpayers have the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 carried this burden and proved disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the cottage is unfinished and can only be used four months per year;
- 2) the assessment card has numerous errors, i.e., public water and sewer, finished attic, and paved driveway;

- 3) the building assessment has increased 370 percent, and the land assessment 1500 percent, in one year's time;
- 4) similar properties are selling for between \$89,000 and \$100,000; and
- 5) a realtor estimated a \$94,900 listing price as of August 3, 1991 without time adjusting to April 1, 1990.

The Town argued the assessment was proper because:

- 1) one comparable sold for \$145,000 in 1989, and another for \$171,500 in 1990;
- 2) the Property is well within the range of acceptable value and is on the low side of all comparables; and
- 3) the Property has the smallest lot size, therefore, the per-square-foot value is higher and the land value is lower.

Board's Rulings

Differing square-foot assessment values are not necessarily probative evidence of inequitable or disproportionate assessment. The market generally indicates higher per-square-foot prices for smaller lots than for larger lots, and since the yardstick for determining equitable taxation is market value (see RSA 75:1), it is necessary for assessments on a per-square-foot basis to differ to reflect this market phenomenon.

A greater percentage increase in an assessment following a town-wide reassessment is not a ground for an abatement, since unequal percentage increases are inevitable following a reassessment. Reassessments are implemented to remedy past inequities and adjustments will vary, both in absolute numbers and in percentages, from property to property.

The Taxpayers complained about the high amount of taxes they must

pay. The amount of property taxes paid by the Taxpayers was determined by two  
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factors: 1) the Property's assessment; and 2) the municipality's budget. See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayers paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

However, based on the evidence we find an adjustment is necessary given the physical condition of the house. The board's inspector reviewed the file, property tax card and inspected the property, and filed a report with the board. This report concluded the proper assessment should be \$115,500 (land \$99,100; buildings \$16,400). The inspector adjusted the Town's assessment to compensate for the physical condition of the house and the interior finish. The inspector, however, concluded the land assessment was consistent with other land assessments in the area. The Taxpayers argued the property tax card contained numerous errors. Two are not errors -- septic and water -- because the card correctly shows the Property has septic and lake water, not public sewer and water as asserted by Taxpayers. The additional depreciation given by our board inspector adequately adjusts for the attic finish. Finally, no evidence was submitted requiring an adjustment because of the improved pond.

The sales submitted by the Town, especially the Smallwood sale,

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support the adjusted assessment. The Taxpayers' listing calculation has been given little weight because it was as of August 31, 1991, not April 1, 1990. The Taxpayers' \$75,800 sale was on Crystal Lake, not Mascoma Lake, and no adjustment was made for this.

Based on the evidence, we find the correct assessment should be \$115,500 (land - \$99,100, buildings - \$16,400). If the taxes have been paid, the amount paid on the value in excess of \$115,500 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

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

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Donald M. and Medora H. MacMeekin, Taxpayers, and Chairman, Selectmen of Enfield.

Dated: October 29, 1992

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Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order responds to the "Taxpayers'" reconsideration motion. The board denies the motion.

Before reaching the merits of the motion, the board must address the Taxpayers' untimely filing of the RSA 541:3 rehearing motion. The board's decision was dated October 29, 1992, and the reconsideration motion should have been filed within 20 days of that date. See RSA 541:3. The January 15, 1993 motion was certainly filed after the 20-day deadline. The Taxpayers asked the board to excuse the untimeliness because they were moving from Massachusetts to Texas when the decision was sent out. RSA 541:3 does not authorize the board to waive the untimely filing. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's powers entirely statutory); Daniel v. B & J Realty, 134 N.H. 174 (1991) (statutory deadlines cannot be extended or waived without statutory authorization). Additionally, parties are required to keep the board informed about any address changes, and the Taxpayers did not. Thus, the board denies the request to waive the untimely filing issue.

Even if the motion was timely filed, the board would deny the reconsideration motion because it did not state any basis in fact or law for reconsideration. See 541:3. The motion merely stated the Taxpayers wanted to appeal to the supreme court. The motion did not state any reasons why the board erred.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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Ignatius MacLellan, Esq., Member

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Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing order has been mailed this date, postage prepaid, to Donald M. and Medora H. MacMeekin, Taxpayers; and the Chairman, Selectmen of Enfield.

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Valerie B. Lanigan, Clerk

Date:

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