

Hillis Holt

v.

Town of Enfield

Docket No.: 9991-90

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1990 assessments of:

\$126,100 (land \$102,600; buildings \$23,500) on Map 26, Lot 9, a 7,289 square-foot lot with a camp;

\$133,000 (land \$113,800; buildings \$19,200) on Map 26, Lot 9-1, a 14,300 square-foot lot with a camp; and

\$ 12,600 on Map 26, Lot 25, a vacant 2.10-acre lot (the Properties).

For the reasons stated below, the appeal for abatements is denied for Lots 9 and 9-1 and granted to the Town's revised assessment of \$11,600 for Lot 25.

The Taxpayer has the burden of showing the assessments were disproportionately high or unlawful, resulting in the Taxpayer paying an unfair and disproportionate share of taxes. See RSA 76:16-a; Tax 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to prove the Properties were disproportionately assessed.

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The Taxpayer argued the assessments were excessive because:

- (1) a tremendous increase in taxes for lakefront summer residents is disproportionate to taxes of year round residents;
- (2) to tax a view is irrational;
- (3) arbitrary values are placed on properties and unit prices adjusted to prove the value; and
- (4) the Taxpayer submitted a package of information marked as TP #1 and the Taxpayer's attorney submitted a brief marked as TP #3 which are a part of the record and need not be reiterated in this Decision.

The Town presented photos and a spread sheet showing the Property and comparables and various units of comparison, e.g., square feet of usable living area and square feet of land area, lake frontage, etc. and the assessment cards of the comparables. The Town stipulated that based upon a survey presented to the Town by the Taxpayer, the Town has corrected the size of Lot 25 to 1.35 acres and revised the assessment to \$11,600 and argued that this revised assessment and the assessments of Lots 9 and 9-1 were proper because:

Lot 25

- (1) it was assessed as an accessory lot as opposed to a buildable lot and appraised as 25% good due to its topography and potential developability.

Lots 9 and 9-1

- (1) they were originally appraised as one lot but the Taxpayer advised that they

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were separately deeded lots and should be assessed separately;

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(2) they were assessed based on comparable sales; and

(3) the view was not assessed separately but was taken into account as an influence factor affecting market value.

Board's Rulings

We find the Taxpayer failed to prove the Properties' assessments were disproportional. We also find the Town supported the Properties' assessments.

The Taxpayer did not present any credible evidence of the Properties' fair market value. To carry this burden, the Taxpayers should have made a showing of the Properties' fair market value. This value would then have been compared to the Properties' assessments 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 Town testified the Properties' assessments were 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).

A greater percentage increase in assessments 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

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absolute numbers and in percentages, from property to property. Increases from past assessments are not evidence that a taxpayer's property is disproportionately 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).

If the taxes have been paid for map 26, Lot 25, the amount paid on the value in excess of \$11,600 shall be refunded with interest at six percent per annum from date paid to refund date. RSA 76:17-a.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to William K. Koppenheffer, Esq., Taxpayers' attorney, Hillis Holt, Taxpayer; and Chairman, Selectmen of Enfield.

Dated: November 8, 1993

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Valerie B. Lanigan, Clerk

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ORDER

This order relates to the Taxpayer's rehearing motion, which is denied.

The Taxpayer complains that Map 26, Lot 9 has been appraised as an "accessory lot" to lakeside property. The Taxpayer argues the current-use code should be applied. The Taxpayer failed to apply to the Town for current use but, if he had, the parcel does not meet the 10-acre, minimum-size requirement or the three exceptions for current-use assessment.

In response to interrogatories presented by the Town of Enfield, the Taxpayer argued that "our summer camps are inhabitable from Memorial Day to Columbus Day, a period of 137 days or 37% of a year. It would thus be reasonable to tax them at 37% of the assessment."

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This is a common, but flawed, argument made by many owners of seasonal property. The proper assessment is based on market value, not any particular period of occupancy. The market reflects any limitations of use or access during a calendar year.

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Referring to MMC's methodology, which uses standard mass-appraisal terms such as effective area, valuation indicators, residual-land value, and influence and condition factors, the Taxpayer complains further in his brief that "measurements and calculations are rendered impotent by various 'valuation indicators.'"

The Taxpayer further alleges that "the bills are defective and the assessments are not fair and equitable, they are, in fact, irrational and dishonest."

The Taxpayer informs this board that his appeal in Superior Court for a subsequent tax year "has been continued pending the outcome of this hearing."

The board has no jurisdiction to address Mr. Holt's allegation that he was refused legal assistance by some eight New Hampshire lawyers, to whom he has paid a total of \$5,768.92, as well as \$45 in referral fees to the New Hampshire Bar

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Association.

Mr. William K. Koppenheffer, Esq., filed an appearance dated March 13, 1992, and further noticed the board on behalf of his client that Mr. Holt wished to withdraw his "waiver of hearing" and to have the appeal scheduled for hearing.

The Town of Enfield filed no objection, and a hearing was scheduled for October 14, 1993 to further accommodate Mr. Holt's request that a hearing be scheduled between June 1 and October 15, 1993.

A letter from Attorney Koppenheffer was delivered (express mail) to the board at 10:35 A.M. on October 14, 1993. Although the hearing started at 9:00 A.M., the letter was marked Taxpayer Exhibit #3. In his "brief in support of the Taxpayer's petition," Attorney Koppenheffer indicated that Map 26, Lot 9

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contained 6,680 square feet with 75' of shorefront and that Map 26, Lot 9-1 had only 13,600 square feet. These figures are contrary to the actual dimensions as shown on the Taxpayer's survey: Map 26, Lot 9 area 8,140 square feet with 79' of shorefront; and Map 26, Lot 9-1 area 16,045 square feet.

The Taxpayer's attorney alluded to two encroachments (Shaker Road and the high-water mark of Mascoma Lake) as causing the smaller areas noted in his brief.

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No evidence was supplied to support this claim, while the Taxpayer's survey of the subject lots showed areas and frontage well in excess of the assessed dimensions.

With reference to Map 26, Lot 25, the Town corrected the lot size from 2.1 to 1.35 acres per the Taxpayer's survey.

The Taxpayer also submitted a graph which purported to show ratios of percent increase in taxes as between residents and nonresidents, seasonal and nonseasonal properties, before and after the revaluation in 1990. No specific properties were identified, therefore no conclusions could be drawn with respect to proportional assessment to the subject lots.

The Taxpayer may appeal the board's denial of the rehearing motion to the Supreme Court within thirty (30) days of the clerk's date below, not the date this order is received.

The board reaffirms its earlier decision. The Taxpayer's motion for reconsideration is denied. Based on the understated size and shorefront of both Lots 26/9 and 26/9-1 on the Town's assessment-record cards, it could be that Mr. Holt is underassessed. The Town should review these assessment cards for future valuation purposes.

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BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing order has been mailed this date, postage prepaid, to William K. Koppenheffer, Esq., Attorney for Taxpayer; Hillis Holt, Taxpayer; and Chairman, Selectmen of Enfield.

Dated:

Valerie B. Lanigan, Clerk

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