

Evelyn L. Hughes and Don L. Scherig

v.

Town of Moultonborough

Docket No.: 11033-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$262,200 (land, \$201,400; building, \$60,800) on .6 acres with building (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 203.09(a); 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) larger lots with more frontage are assessed about the same as smaller lots with less frontage;
- 2) the lot has just enough land for the leachfield and driveway; and

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3) the Town does not maintain the road, provide water, sewage or garbage disposal.

The Town argued the assessment was proper because:

- 1) the market and analysis of sales demonstrated smaller lots are assessed far more per square feet than larger lots;
- 2) a correction needs to be made on the property record card to reflect the omission of the utilities value; and
- 3) the Property has been equitably assessed in relation to other waterfront 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 Findings

We find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The Taxpayers argued that larger lots were assessed at a lower price per square foot than their lot. However, differing square-foot assessment values are not necessarily probative evidence of inequitable or

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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.

The Taxpayers further argued the tapering shape of their lot limited the utility and thus the value of the rear portion of the lot. The board finds that despite the tapering of the lot towards the road there was adequate area to accommodate a new house and septic system. As the Town stated the most significant contributing factor to the value of the Property is its water frontage and access rather than its road frontage.

The Taxpayers also stated that the Town does not provide various services or maintain the road. However, lack of municipal services is not necessarily evidence of disproportionality. As the basis of assessing property is market value, as defined in RSA 75:1, any effect on value due to lack of municipal services is reflected in the selling price of comparables and consequently in the resulting assessment. See Barksdale v. Epping, 136 N.H. 511, 514 (1992).

Finally, 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

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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 stated that the Taxpayers were actually underassessed because the value for utilities for the lot had not been assessed. However, the Town did not provide evidence as to what type of utilities had been added to the Property. Therefore, the board declines to order an increase in assessments for the 1991 tax year, but recommends the Town make the appropriate corrections to the assessment card prior to the 1994 tax billing as is required by RSA 75:8.

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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Evelyn Hughes, Taxpayer; and Chairman, Selectmen of Moultonborough.

Dated: February 16, 1994

Melanie J. Ekstrom, Deputy Clerk

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