

Richard W. and Debra D. Watton

v.

Town of Sandown

Docket No.: 11091-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 adjusted assessment of \$119,700 (land, \$78,400; building, \$41,300) on 8,013 square-foot lot with a 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) the property-record card was corrected to reflect the correct lot size, but the value per square foot increased almost 50%;
- 2) the lot is steep and therefore unable to have a boat ramp;

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- 3) an adjacent lot is larger, yet the square foot price was less; and
- 4) a proper land value would be \$65,000.

The Town argued the assessment was proper because:

- 1) Taxpayers' land area was corrected and the land price schedule used throughout the Town was used which resulted in a price of \$9.78 per square foot;
- 2) Taxpayers' Property is superior to Lot 18 as the Taxpayers have a better view; and
- 3) the waterfront values were established from waterfront property sales at the time of the revaluation and the amount of water frontage and seasonal nature of the Property were not the controlling factors of value.

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

Based on the evidence, the board finds the Taxpayers did not carry their burden of proof. To the extent there were errors in the lot size, the Town has corrected those errors, and the Town used the land tables to

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recalculate the land assessment. Despite this correction, the Taxpayers argued the assessment was excessive because of the per-unit price differential between smaller lots (higher per-square foot prices) and larger lots (lower per-square foot lot). 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.

Additionally, 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.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The reconsideration motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A reconsideration motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence

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and arguments submitted to the board, the board's decision was erroneous in fact or in law. Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a

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reconsideration motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the reconsideration motion. 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 Richard W. and Debra D. Watton, Taxpayers; and Chairman, Selectmen of Sandown.

Dated: May 4, 1994

Melanie J. Ekstrom, Deputy Clerk

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