

Judith A. Doyle

v.

Town of Hampton

Docket No.: 11212-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$396,500 (land \$277,500; buildings \$119,000) on Map 256/Lot 002 (3 Dumas Ave.) on a single family home on a 6,380 square foot lot (the Property). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has 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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

- (1) of the total sales which occurred between April 1990 and March 1991, only 4 sales for single family residences exceeded the value of the subject;
- (2) the Property is disproportionately assessed when compared to abutting larger properties and commercial properties;
- (3) the Property suffers from commercial intrusion in the neighborhood which lowers property values;

(4) there was an inequitable reduction in the assessments of commercial properties as opposed to residential properties;

(5) the Town has imposed a sewer moratorium which is an impediment Great Boar properties have that others do not; and

(6) the Property suffers from severe economic depreciation.

The Town argued the assessment was proper because:

(1) in 1989, the Town was revalued by MMC; in 1990, an update in the Boar's Head area as well as other areas was performed; in 1991, the Town did an in-house revaluation of all properties; and in 1992, the Town performed another in-house revaluation of all properties;

(2) the Town has been trying to keep current with the most recent sales and all of the Taxpayers' neighbors were similarly assessed;

(3) five comparable sales support the Property's land value;

(4) commercial properties have taken a harder hit based on clauses that allowed banks to call loans when the mortgage value exceeded market value resulting in many properties being forced into foreclosure in spite of the fact that the owners were willing and able to maintain their monthly mortgage payments;

(5) the value should be different from the 1991 to 1992 assessments because the market was declining from 1991 to 1992 at least an additional 10% beyond the 103% ratio;

(6) the sewer moratorium affects those people most who don't already have a structure on their property; and

(7) the Sun Valley comparables compete with the Town of Seabrook and the nuclear power plant has a negative effect on property values.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed.

The Taxpayer did not present any credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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. The Taxpayer submitted a great deal of information about other properties in the Town and assessments that were reduced by the Town but offered no credible evidence as to how those properties compared to or affected the market value of the subject.

There was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's assessment because of underassessment 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.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence 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 rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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 Judith A. Doyle, Taxpayer; and Chairman, Board of Selectmen of Hampton.

Dated: April 6, 1995

Valerie B. Lanigan, Clerk