

Charles S. and A.R. Rotondi

v.

Town of Hopkinton

Docket No.: 11219-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$47,000 (land \$38,000; buildings \$9,000) on a .56-acre lot with a garage (the Property). 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 meet their burden of proof.

The Taxpayers argued the assessment was excessive because:

- (1) the Property was purchased in 1986 for \$35,000, which the Taxpayers stated was high because one of the Taxpayers owned the abutting property;
- (2) the Property has some topographical problems, including some wet areas;
- (3) it was excessive compared to the time-adjusted previous assessment and the 1986 sales price; and
- (4) the Property was worth only \$25,000-\$30,000 in 1991.

The Town argued the assessment was proper because:

- (1) the prior assessment could not be relied upon because that was the result of a 1981 revaluation;
- (2) the Taxpayers' photographs may not be representative of wetness as they were taken in the spring when the ground was still frozen and there was runoff from snow and ice;
- (3) the Town reviewed the Property and the assessment and reduced it based on that review and no further adjustment is warranted; and
- (4) the assessment was based on a sales analysis performed during the revaluation and the resulting front-foot values were consistently used in this area of Town.

Board's Rulings

Based on the evidence, we find the Taxpayers failed to prove the Property's assessment was disproportional. We also find the Town supported the Property's assessment.

The board's focus is on the Property's market value. 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.

The Taxpayers' 1986 purchase does not meet the market-value requirement because our inquiry relates to 1991, and the real estate market changed

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dramatically between 1986-1991. Thus, we find the purchase price was too remote in time to rely upon here.

Similarly, we cannot rely upon a 1981 assessment given the recent 1991 assessment based on market data during the revaluation period. Moreover, the Town demonstrated how it arrived at the assessment based on the sales analysis. The Town also testified the Property's assessment was 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 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Charles S. and A.R. Rotondi, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Dated: December 9, 1994

Valerie B. Lanigan, Clerk

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