

Alden Sanborn

v.

Town of Kingston

Docket No.: 11283-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$308,200 (land \$121,300; buildings \$186,900) on a 1.64-acre lot with a house, barn and dentist office (the Property). The Taxpayer 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 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 and prove disproportionality.

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The Taxpayer argued the assessment was excessive because:

- (1) the Town reduced the abutting lot's assessment, yet the Property has less acreage and a smaller store; and
- (2) the land, if vacant, would never sell for its assessed value.

The Town failed to submit a brief to support the assessment and was finally defaulted.

The board's inspector reviewed the assessment-record card and 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 proper assessment should be \$280,200 (land \$93,300; buildings \$186,900). Because the abutting lot and the Property share the same conditions, the inspector adjusted the Property's land assessment to equal the abutter's adjusted land assessment. 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. In this case, the board rejects the inspector's recommendation for the reasons that follow.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove the Property's assessment was disproportional.

The Taxpayer did not present any credible evidence of the Property's

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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's primary argument was the Town had adjusted a neighbor's property, which had a similar mix of residential and commercial uses. The board has reviewed and compared the assessment-record cards and does find that indeed the Taxpayer's neighbor, Christine M. Moore, has had her valuation lowered based on reducing the size of the site around the commercial use and due to a different square-foot price for the land. However, the board cannot determine from the evidence whether those adjustments were proper and relative to the market. An abatement given to one person does not necessarily justify an abatement to another unless that abatement can be shown to be reflective of market value and results in a proportional assessment. The board has no way of knowing whether the abutter's property is properly assessed or underassessed. Any underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Canata, 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

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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

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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.

Further, the board reviewed the photographs and assessment-record card description of the Property and does not find the equalized indicated value of \$254,700 to be unreasonable ($\$308,200 \div 1.21$). The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. See RSA 541-A:18, V(b); see also Petition of Grimm, 138 N.H. 42, 53 (1993) (administrative board may use expertise and experience to evaluate evidence).

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 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 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

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Alden Sanborn, Taxpayer; and Chairman, Selectmen of Kingston.

Dated: May 23, 1994

Lynn M. Wheeler, Deputy Clerk

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