

Jean L. and John T. Pottinger, Sr.

v.

Town of Hopkinton

Docket No.: 11514-91PT

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$167,650 (land, \$70,500; building, \$97,150) on 1.05 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was inequitably assessed compared to similar sized properties;
 - 2) the Property valuation (land and buildings) exceeded the fair market value;
- and

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3) an appraisal by RJC and Associates determined a proper assessed valuation as of April 1, 1991 would be \$151,000.

The Town argued the assessment was proper because:

- 1) the Taxpayers' Property is located in the "Historic District";
- 2) the Taxpayers failed to attend the formal reviews, and after a review of the Property, it was noted the Taxpayers' bank appraisal and RJC & Associates' appraisal were not presented;
- 3) the Taxpayers' appraisal failed to utilize the three approaches to value, and did not present any evidence to verify either approach;
- 4) comparable properties indicated the Taxpayers' Property had been assessed consistently with similar properties; and
- 5) the Taxpayers' Property was equitable.

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 an additional physical depreciation should be given due to the building's age and condition resulting in an adjusted assessment of \$162,200 (land, \$70,500; buildings \$91,700). 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

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The board finds the Taxpayers failed to prove their assessment was disproportionate. The board also finds the Town supported the assessment.

The Taxpayers submitted a report by RJC & Associates that merely reworked the assessment computations of the Town. The report's lower-value conclusion was principally predicated on applying greater depreciations and adjustments to the building and land. Such adjustments cannot be universally and absolutely applied but rather should be derived from the market specific to the property being appraised. The Town stated in its brief that the sales in Hopkinton did not recognize as much depreciation as other markets. The Taxpayers' appraiser did not present any market data to support his adjustments nor was any credible evidence of the Property's fair market value.

To carry their 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 "rehearing 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 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

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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

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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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Jean L. and John T. Pottinger, Sr., Taxpayers; and Chairman, Selectmen of Hopkinton.

Dated: April 26, 1994

Melanie J. Ekstrom, Deputy Clerk

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