

Elizabeth L. Desilets

v.

Town of Candia

Docket No.: 11573-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$97,200 (land, \$63,700; building, \$33,500) on a lot with a house (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.

The Taxpayer argued the assessment was excessive because:

- 1) the land was mostly swamp;
- 2) the rate of taxes had increased; and
- 3) the deed to the Property shows 15 acres and the assessment-record card shows 3.4 acres.

The Town argued the assessment was proper because tax maps developed by Cartographics Associates, Inc. indicated the Taxpayer's Property consisted of 3.4 acres. The Town stated that if the Taxpayer had any evidence proving an error exists, the necessary changes will be made.

The board's inspector reviewed the assessment-record card, 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. 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 did not rely on the inspector's report.

Board's Finding

The board finds the Taxpayer failed to prove the Property was disproportionately assessed. The main thrust of the Taxpayer's appeal was the dispute over the actual size of the Property. Albert Desilets purchased the Property by deed dated July, 1960. The deed describes the Property as having 15 acres, more or less. The Taxpayer stated that there has been no conveyances of the land since 1966. The Taxpayer submitted a survey dated May, 1966, which identified a "portion of land being given to neighbor Lawrence R. Couitt." A deed dated June, 1966, transferred "a part of the same premises conveyed to Albert E. Desilets" to Albert E. Desilets and Elizabeth Desilets.

In 1990, the Town contracted with Cartographic Associates, Inc. to develop tax maps for the Town. The final conclusion was that the Property

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consists of 3.40 acres. The board has no evidence to conclude that the Town's survey map is incorrect. The Taxpayer's own evidence indicates that something less than 15 acres was transferred to Albert and Elizabeth Desilets in 1966. It is the Taxpayer's burden to prove the Town's map is incorrect and that burden has not been sustained. However, the Town has offered to correct the size of the Property if the Taxpayer can provide evidence that the Town figure is incorrect.

Concerning the Taxpayer's argument that the land is mostly swamp, the Taxpayer has provided no credible evidence of the Property's fair market value and what market effect the wetness has on the value of the Property. Further, the Town made a topography adjustment to account for the amount of wet area along the frontage and assessed the rear acreage as wetlands. The board finds the adjustments made were reasonable.

Lastly, the Taxpayer complained about the high amount of taxes she must pay. The amount of property taxes paid by the Taxpayer was determined by two factors: 1) the Property's assessment; and 2) the municipality's budget.

See gen., International Association of Assessing Officers, Property Assessment Valuation 4-6 (1977). The board's jurisdiction is limited to the first factor i.e., the board will decide if the Property was overassessed, resulting in the Taxpayer paying a disproportionate share of taxes. Appeal of Town of Sunapee, 126 N.H. at 217. The board, however, has no jurisdiction

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over the second factor, i.e., the municipality's budget. See Appeal of Gillin, 132 N.H. 311, 313 (1989) (board's jurisdiction limited to those stated in statute).

Motions for reconsideration of this decision must be filed within twenty (20) days of the clerk's date below, not the date received. RSA 541:3.

The motion must state with specificity the reasons supporting the request, but generally new evidence will not be accepted. Filing this motion is a prerequisite for appealing to the supreme court. RSA 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Elizabeth L. Desilets, Taxpayer; and Chairman, Selectmen of Candia.

Dated: November 16, 1993

Melanie J. Ekstrom, Deputy Clerk