

James Lavelle/Robert Ross Construction Co., Inc.

v.

Town of Danville

Docket No.: 11578-91 PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of:

\$43,400 on Lot 131X03, a vacant, two-acre lot; and

\$46,100 on Lot 131X02, a vacant, two-acre lot (the Properties).

The Taxpayer owns, but did not appeal, six other vacant lots in the Town with a combined \$202,100 assessment. 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 abatements are denied.

The Taxpayer has the burden of showing the assessments were 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 assessments were excessive because:

- 1) the Town line splits the Properties, i.e., Lot 131X03 has 66,199 square feet in Danville and 20,922 square feet in Kingston, and Lot 131X02 has 50,878 square feet in Danville and 36,636 square feet in Kingston;
- 2) abutting lots with more square footage in Danville had lower assessments than the Properties; and
- 3) the Properties sold in 1992 for a combined \$70,000 total.

The Town argued the assessments were proper because:

- 1) the assessments were based on land sales used to set the values for the 1988 revaluation;
- 2) the assessments considered an excess frontage factor that was applied because the lots were contiguous and under common ownership; and
- 3) the Taxpayer's comparable Lot 5 had a lower assessment because it had combined contiguous frontage with five other lots owned by the Taxpayer and thus received a larger excess frontage factor.

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 assessments were proper. 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.

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Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to prove that the assessments for the two lots were disproportionate. The measure of disproportionality is relative to market value as opposed to other properties as it is always possible that other properties may be 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.

The board finds that in 1992 the Department of Revenue Administration determined that the equalization ratio for the Town was 122% indicating that on an average the assessments were 22% above the market value for that tax year. The Taxpayer stated that he sold the two lots under appeal each for \$35,000 in 1992. Equalizing the assessed values for the two lots by the 1992 ratio of 1.22 indicates that the Properties were proportionately assessed relative to market value ($\$43,400 \div 1.22 = \$35,574$ and $\$46,100 \div 1.22$

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= \$37,787).

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The board notes that the Town's methodology of providing an excess frontage adjustment for contiguous subdivided lots in one ownership is a common one which attempts to recognize the holding costs and marketing costs that the owner has yet to incur before the final retail value of the property is realized. The Town's greater excess frontage adjustment on lots 5-10 recognizes this concept.

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

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 James Lavelle/Robert Ross Construction Co., Inc., Taxpayer; and Chairman, Selectmen of Danville.

Dated: November 19, 1993