

**Deborah and Peter Schofield**

**v.**

**Town of Westmoreland**

**Docket No.: 12083-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$38,300 (land only) consisting of 4.0 acres (the Property). The Taxpayers own, but did not appeal Map 15, Lot 3. 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.

The Taxpayers argued the assessment was excessive because:

- 1) the Property was assessed at \$13,400 as a result of the 1989 revaluation; yet the Town increased the assessment to \$38,300 in 1990;
- 2) the Property had been on the market for one year with no offers; and

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3) the neighbor's property is an eye-sore (junk cars) and another property (view from lot) is also an eye sore (rubbish falling out of a dumpster).

The Town argued the assessment was proper because:

- 1) Avitar's 1989 assessment was not in line with other properties; therefore, the Taxpayers' assessment was raised to be comparable to nearby lots;
- 2) N & D Auto is not next door to the Taxpayers' Property and the business had been established before the Taxpayers' purchased their lot; and
- 3) photos 1-5 were not taken from the Taxpayers' lot and photo 9 shows the Bates lot in relation to the border of the Taxpayers' lot.

The Taxpayers, in their rebuttal, stated:

- 1) due to a divorce, the Property was placed on the market in March, 1991 for \$42,000, reduced in March of 1992 for \$38,000, and finally sold in February 1993 for \$29,000; and
- 2) as evidenced by the sale of the Property, the assessment is too high and a tax abatement is warranted.

#### Board Findings

The board finds the Taxpayers failed to prove the Property was disproportionately assessed. 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 using the sale or assessment of the same or similar properties. 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.  
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The Taxpayers did not support their contention that they are overassessed and failed to submit market data (sales of comparable unimproved parcels of land in Westmoreland) which would support their opinion of value as of April 1, 1991.

The fact that the Taxpayers recommend an adjustment from their 1989 revaluation assessment of \$13,400 to \$28,000 suggests at least, a recognition that there was a substantial underassessment in 1989. The Taxpayers reported a sale of the subject Property in 1993 for \$29,000 as a result of a divorce. While this is some evidence of market value, it is not conclusive evidence. See Appeal of Town of Peterborough, 120 N.H. 325, 329 (1980). The Property was reportedly on the market for \$42,000 in March of 1991 and later reduced to \$38,000 in March of 1992 and sold in February of 1993 for \$29,000, but these factors do not establish an arms-length transaction by themselves. Nor does the 1993 selling price indicate that the Property was not worth \$38,300 on April 1, 1991.

The Town 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).

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

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thirty (30) 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 541:6.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

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George Twigg, III, Chairman

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Michele E. LeBrun, Member

**Certification**

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Deborah Schofield and Peter Schofield, Taxpayers; and Chairman, Westmoreland Board of Selectmen.

Dated: February 7, 1995

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Melanie J. Ekstrom, Deputy Clerk