

**Maurice G. and Pauline T. Martel**

**v.**

**Town of Milton**

**Docket No.: 12122-91PT**

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 abated assessment of \$77,700 (land \$60,600; buildings \$17,100) on a .70-acre lot with a camp (the Property). 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 assessment did not follow the market guidelines;
- (2) the land was overassessed by \$10,000;
- (3) the total assessment should have been \$67,700;
- (4) the person who sold the Property to the Taxpayers and who sold other river lots sold the lots based on the number of waterfront feet; and

(5) the Town did not use this method, resulting in assessments, when analyzed based on the waterfrontage, being higher for lots with less frontage.

The Town argued the assessment was proper because:

(1) the Town assessed the Property using a consistent methodology that was used for all of the lots in the Town (There were three different base rates per acre depending on a property's location with an added value for waterfront lots based on frontage. According to the Town, this methodology was based on sales.);

(2) the Town concluded the sales and price calculations by the original developer were not representative of the market approach; and

(3) a lot (map 32, lot 35) sold November 1991 for \$50,000, which supported the land assessment.

#### Board's Rulings

Based on the evidence, we find the Taxpayers did not show overassessment for the following reasons.

(1) The Taxpayers' case focused solely on the Town's methodology in assessing the land. The Taxpayers did not show the Town's methodology was so flawed that the Property's total assessment was excessive compared to the Property's comparative market value.

(2) The Taxpayers did not present any 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. The Property's equalized value was \$69,400 ( $\$77,700 \div 1.12$  the equalization ratio), and there was no evidence to show this value was excessive.

(3) 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 fact that the Town's methodology was different than the developer who sold the lots in this area does not mean the Town's methodology must be rejected.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) 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 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 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. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Maurice G. and Pauline T. Martel, Taxpayers; and Chairman, Selectmen of Milton.

Dated: August 14, 1995

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Valerie B. Lanigan, Clerk

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**Maurice G. and Pauline T. Martel**

**v.**

**Town of Milton**

**Docket No.: 12122-91PT**

**ORDER**

This order responds to the "Taxpayers'" rehearing motion, which is denied for failing to state any error in fact or law. See RSA 541:3, 4. (The paragraphs below correspond to the numbered paragraphs in the rehearing motion.)

Paragraph 1. The board disagrees that any impropriety existed concerning the board's handling of this case. The board must be impartial and unbiased, and the board scrutinizes its conduct to meet this standard. The Taxpayers' letter stated that one of the board members had known the "Town" assessor for many years and that this familiarity created bias in the board member.

The board is familiar with many municipal officials through the numerous years of hearings that have been held by the board. The board works to ensure that this "familiarity" does not affect impartiality or the appearance thereof. In this case, neither board member is a personal friend with the Town assessor.

The Taxpayers stated anyone reviewing the tape would be able to conclude the board was not impartial. The board reviewed the tape. The tape clearly does not support the Taxpayers' assertion. The Taxpayers referenced board interruption, and it is clear the board was trying to focus the Taxpayers on relevant arguments. Unfortunately, the Taxpayers misinterpreted the board's comments as the board being an ally of the Town. The board members have substantial experience in hearing and deciding tax appeals, and thus, the members have a working knowledge of what arguments can be considered valid bases for abatements. Additionally, the board wants taxpayers, especially those appearing before the board for the first time, to have an opportunity to make a full presentation. Consistent with this, the board will sometimes inform taxpayers about arguments that cannot be helpful to the taxpayer's case. The board will also instruct taxpayers about what arguments can be persuasive. We do this to give the taxpayer an opportunity to make the best presentation even if the taxpayer's original presentation included arguments that would not warrant an abatement. For example, the board's discussion below in paragraph 3 is an often heard argument for which there is a clear standard. The board has concluded that it has a duty to inform taxpayers of clearly established assessing standards and to give taxpayers an opportunity to argue based on those clear standards.

Paragraph 2. The argument in paragraph 2 does not warrant a rehearing. The board obviously considers zoning and its effect on value. The Taxpayer did not present any evidence about the effect zoning had on value. This is especially true because the Taxpayers' lot is a developed (grandfathered) lot. The zoning ordinance would have less effect on the Property's developed value Page 3  
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than the ordinance may have on the value of an undeveloped lot. The Taxpayers'

zoning argument points out the major flaw in the Taxpayers' case. The Taxpayers focused on the methodology used in this area of Town rather than focusing on whether their Property was overassessed. The Town's methodology, including the assessor's lack of knowledge about the zoning, may have resulted in the overassessment or underassessment of other lots. However, the focus of this appeal was whether the Taxpayers' Property was overassessed.

Paragraph 3. The arguments in paragraph 3 do not warrant rehearing. Certain issues in property taxation have been clearly resolved, and this is one of them. The board is required to review a taxpayer's entire estate to determine whether, overall, the taxpayer has been overassessed. For example, if a taxpayer owns more than one property in a municipality but only appeals one property, and the taxpayer demonstrates that the appealed property has been overassessed, the taxpayer is not entitled to an abatement unless the board concludes the taxpayer's other properties were not underassessed. The issue the board reviews is proportionality of the tax burden. Thus, a taxpayer is not entitled to an abatement unless the taxpayer shows the tax burden was disproportionate. An assessment could include an error, but the taxpayer must demonstrate that that error resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. City of Manchester, 70 N.H. 200, 205 (1899).

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While the Taxpayers only wanted to address the land assessment, the board was required to review the total assessment. This practice is consistent with the constitutional principle of proportionality and is consistent with how the market

values property. In the market, people buy properties for a total price not for separate values on the land and on the building. The assessment process in New Hampshire breaks down the land and building assessments, but the only figure that matters in reviewing proportionality is the total assessment. The legislature has recognized this and now allows municipalities to send out tax bills showing only a total assessment with no breakdown between land and buildings. RSA 76:2-a.

This paragraph in the rehearing motion points to one of the major reasons the board had to deny the appeal. The Taxpayers are not entitled to an abatement unless they show the total assessment was excessive, and the board concluded the Taxpayers had not done so because the Taxpayers presented no evidence on the total value. See tape index 170 where Mr. Martel, under board questioning, admitted he did know what the total Property value was. "Not prepared with those numbers."

Paragraph 4. The arguments in paragraph 4 do not warrant a rehearing and the decision and portions of this order adequately address this issue.

Paragraph 5. As indicated in paragraph 3, and on page 12 of the decision, without any information concerning the Property's fair market value, the board could not grant an abatement.

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In conclusion, the Taxpayers failed to present sufficient arguments and evidence to support a finding that their Property was overassessed. If the Taxpayers wish to challenge the Town's methodology, the route for such a challenge is through RSA 71-B:16 IV (copy attached).

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

\_\_\_\_\_  
George Twigg, III, Chairman

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Ignatius MacLellan, Esq., Member

**Certification**

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Maurice G. and Pauline T. Martel, Taxpayers; and Chairman, Selectmen of Milton.

Date: September 25, 1995

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Valerie B. Lanigan, Clerk

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