

Richard F. and Karen G. Hunihan

v.

Town of Washington

Docket No.: 10117-90 and 12128-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1990 assessment of \$147,330 (land, \$69,210; building, \$78,120) on .97 acres with building and the 1991 assessment of \$187,390 (land, \$69,210; building, \$118,180) (the Property). The Taxpayers own, but did not appeal, two other parcels in Lake Ashuelot Estates known as tax map 15, lots 129 and 130. At the request of the Taxpayers, these two lots were assessed together. 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.

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The Taxpayers argued the assessment was excessive because:

- 1) the Property was purchased for \$60,000 and was not an arms-length transaction as defined in the Real Estate Terminology Handbook, accordingly no fair market had been established;
- 2) the Property's assessment had increased by 62.85% since the 1989 revaluation;
- 3) only two lakefront properties were used to establish values and did not represent open market transactions;
- 4) the revaluation was unfair as only selected properties were chosen;
- 5) the Town's method to calculate the assessment on waterfront property was unfair; and
- 6) based on a previous board decision (Damm v. Washington, BTLA Docket No. 7481-89) an abatement was warranted.

The Town argued the assessment was proper because:

- 1) all properties with frontage of any type, water or road, were assessed during the 1989 reevaluation by using an "averaging" method;
- 2) the board's previous decision did not order the Town to calculate other properties which were also figured using the averaging method;
- 3) sales of properties in Lake Ashuelot Estates during the 1990 and the 1992 revaluation calculated values in line with the sales values; and
- 4) Taxpayers' 1990 and 1991 assessments were fair and equitable.

The board's inspector reviewed the 1991 property-assessment 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 the proper assessment

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should be \$174,480 (land, \$56,300; building, \$118,180). The inspector adjusted the unit depth. 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 rejects the inspector's recommendation.

Board Findings

Based on the evidence, the board finds the Taxpayers did not show overassessment. Additionally, we find the Town supported the assessments.

One of the Taxpayers' arguments involved the board's 1989 decision in Damm v. Washington. The board, however, heard the Damms' 1990 appeal and issued an order that addressed many of the issues raised by these Taxpayers. A copy of Damm v. Washington BTLA Docket No. 10191-90PT is attached along with the board's rehearing order in that case. The board incorporates those parts of the Damm decision that address issues raised by these Taxpayers. As discussed in Damm, we found the Town properly reviewed and reassessed the waterfront properties. The Taxpayers here did not show that that process resulted in overassessment of the Property.

In making a decision on value, the board looks at the Property's value as a whole (i.e., as land and buildings together) because this is how the market views value. Moreover, the supreme court has held the board must consider a taxpayer's entire estate to determine if an abatement is warranted. See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). The Taxpayers have

not shown how the total assessment resulted in overassessment.

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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. 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.

Finally, the board did not follow the inspector's recommendation because the board heard several Washington appeals, reviewing a significant amount of evidence on the lakefront assessments. We find the Town acted properly, and thus, we do not accept our inspector's report.

A motion for rehearing, reconsideration or clarification (collectively "reconsideration 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 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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Richard and Karen Hunihan, Taxpayers; and Chairman, Selectmen of Washington.

Dated: December 13, 1994

Melanie J. Ekstrom, Deputy Clerk

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