

John M. and Mary W.M. Dumais

v.

Town of Bow

Docket No.: 12188-91PT

DECISION

The "Taxpayers" appeal pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$344,300 (land \$99,000; building \$245,300) on a 2.66-acre lot with a house (the Property). 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) a marble fireplace is not as intricate as a brick fireplace;
- (2) extensive repairs were made to the home, i.e., a fireplace crack, a new roof, the floor was dropped, new beams, an attic access port, etc.;
- (3) a February, 1992 appraisal estimated a \$299,000 fair market value; and

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(4) since the construction was monitored by the Town's building inspector and an occupancy permit was ultimately issued, the Town should bear some responsibility.

The Town argued the assessment was proper because:

(1) the Taxpayers' comparables were not comparable because they had less gross-living adjustments, two comparables did not have a heated swimming pool, and the Taxpayers' Property is superior, i.e., marble fireplace, upgraded appliances, security system and hot tub;

(2) using the Taxpayers' value range for comparison and applying \$90.00 per-square foot to the Taxpayers' gross-living area results in a \$344,500 value, which supports the Property's assessment;

(3) the Taxpayers' comparables and some neighboring properties were equitably assessed in size, front-foot values, front footage, and total land values;

(4) exhibit three indicated comparison in total living area of other homes;
and

(5) the Taxpayers' assessment was equitable, both in land and building.

Board Findings

Based on the evidence, the board finds the Taxpayers failed to prove the Property's assessment was disproportional. The Taxpayers did not submit any repair bills to support the extensive repairs or that the repaired state of the house would negatively affect its market value.

The bank appraisal was for refinancing purposes and was done approximately a year later than the assessment date of April 1, 1991. If adjusted by the Taxpayers' appraiser's rate of .5% per month, the market value

estimated would be \$315,445 (299,000 x 1.055). This time adjustment and the
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revision of the inadequate adjustments noted by the Town would result in the appraisal generally supporting the assessed value of \$344,300 and its indicated market value of \$337,550 (344,300 ÷ 1.02 [1990 Bow equalization ratio]).

The Town acknowledged that the Wolf property, one of the Taxpayers' comparables, sold for \$222,050 on January 11, 1991, and was a bank sale and "appears to have been graded too low in error."

The board finds the Taxpayers' Property was not overassessed. However, there was evidence indicating certain surrounding properties may have been underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayers' Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayers' 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 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).

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.

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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

George Twigg, III, Chairman

Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to John and Mary W.M. Dumais, Taxpayers; and Chairman, Selectmen of Bow.

Dated: December 29, 1993

Melanie J. Ekstrom, Deputy Clerk