

Thomas J. and Carole A. Elliott

v.

Town of Milton

Docket No.: 12257-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$87,700 (land \$68,700; buildings \$19,000) on a .10-acre lot with a camp (the Property). The Taxpayers also own, but did not appeal, another lot in the Town assessed at \$94,406. 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 prove the Property was disproportionately assessed.

The Taxpayers argued the assessment was excessive because:

(1) the Town was inconsistent in assessing lakefront properties;

(2) the assessment is excessive compared to similar properties;

Page 2

Elliott v. Town of Milton

Docket No.: 12257-91PT

(3) properties are selling for prices far below their assessed values; and

(4) the Property was listed for \$47,500 with no buyers, but a sales agreement was executed on July 9, 1993 for \$40,000 and the Property subsequently sold at auction for \$12,500 on April 7, 1994.

The Town failed to submit any documentation to support the assessment and was finally defaulted.

Board's Rulings

We find the Taxpayers failed to prove the Property's assessment was disproportional. 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.

The Taxpayers submitted six listing sheets of properties which sold between May, 1991 and November, 1992. The Taxpayers argued that these sales proved that the Town's "formula" for assessing lake frontage was inconsistent and the assessments were not in line with market value because the properties sold for less than their assessed values. The Taxpayers asked the board to base its decision on this evidence. The board was unable to rely upon the sales because the Taxpayers did not include: (1) any information relative to the comparability of the sales to the subject; (2) what adjustments should be

made to the sales for such things as time, size or location; (3) any information relative to the arms-length nature of the sales; and

Page 3

Elliott v. Town of Milton

Docket No.: 12257-91PT

(4) copies of the assessment-record cards for the board to review the Town's assessments and any adjustments made. Further, the Taxpayers argued only that the land value was disproportionate and offered no evidence as to the Property's value as a whole. 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 stated a purchase and sales agreement was executed for \$40,000 in July, 1993, and the Property subsequently sold at auction for \$12,500 on April 7, 1994. However, as stated previously, the Taxpayers offered no evidence of the Property's fair market value as of April 1, 1991, the date of assessment.

The board must comment on the Town's failure to submit any documents whatsoever to support the assessment. The board must review individual property assessments within the context of the assessments generally in the Town. The board cannot do this if the Town does not submit sales or other documentation to support the assessment. RSA 75:1 requires that assessments be in line with market value. Therefore, providing sales is essential for the board to compare the Property's assessment with fair market value and the general level of assessment in the municipality. See Appeal of NET Realty

Holding Trust, 128 N.H. 795, 796 (1986).

A motion for rehearing, reconsideration or clarification (collectively "reconsideration motion") of this decision must be filed within twenty (20)

Page 4
Elliott v. Town of Milton
Docket No.: 12257-91PT

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

George Twigg, III, Chairman

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Thomas J. and Carole A. Elliott, Taxpayers; and Chairman, Selectmen of Milton.

Dated: September 22, 1994

Lynn M. Wheeler, Deputy Clerk

0006