

Walter F. & Carol M. Wienzek

v.

Town of Merrimack

Docket No.: 12371-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$108,900 (land \$85,000; buildings \$23,900) on a single-family home on a .3-acre lot (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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- (1) an appraisal as of April 1, 1989, estimated the Property's value at \$94,000; a second appraisal as of July 1, 1991, estimated a market value of \$54,000;
- (2) all the waterfront property was disproportionately assessed relative to the balance of the Town;

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(3) the Property should be assessed at approximately \$81,000 based on adjusting and equalizing the sales included in the two appraisals and by comparing the Property's 1989 and proposed 1995 assessments to those of a neighbor's non-waterfront property; and

(4) the Town's comparables used at the time of the 1989 reassessment were not waterfront properties.

The Town argued the assessment was proper because:

(1) the properties on Naticook Lake were consistently assessed and summarized on Municipality Exhibit C;

(2) the Taxpayers' comparables were dissimilar to the Property due to being on a different lake, in an inferior physical condition or not being a waterfront property;

(3) the Taxpayers' appraiser did not adequately adjust for the size and frontage differences of the comparables and the condition of the improvements; and

(4) the difference between the Taxpayers' two appraisals indicated a reduction in value in total of 43% and for the site alone of over 50% with no explanation for the magnitude of the reduction.

Board's Rulings

We find the Taxpayers did not carry their burden in showing the assessment was improper or excessive. The board realizes the Taxpayers' burden can be difficult especially in a case such as this where there existed very little market data relative to values on Lake Naticook. However the board finds the Taxpayers' two appraisals contained too many inconsistencies to be given any weight in a

determination of market value. These

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inconsistencies included such things as wrong sale price, no adjustments for

different water bodies (despite descriptive comments that there was a difference), time adjustments for sales when the appraiser's comments indicates none were required, no adjustment for size of lot or amount of frontage and a significant drop in the site value in the cost approach without any accompanying explanation.

The board was concerned that the Property had not been adequately adjusted for the unique style and construction materials of the cottage; however, in reviewing the Town's assessment-record card the board notes that the 40% depreciation adjustment given to the building is reasonable based on the board's experience. 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).

Further, the board finds the Taxpayers' analysis comparing the 1991 and proposed 1995 assessments to a neighbor's nonwaterfront property is not conclusive of disproportionality. Such comparative analysis is not tethered to any finding of market value for either year. It strictly shows that there has been a relative change in the value between the two properties. Such change may be reasonable if the market has changed in those intervening years. However not having any conclusive market evidence of either property in 1991 or in 1995, the board is unable to determine from this type of analysis whether the Taxpayers were disproportionately assessed.

In short the Taxpayers failed to prove their claim that waterfront property was generally assessed higher than all other property in Town. Due

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to the lack of good market data and the inconsistencies in the Taxpayers' appraisal, the board was unable to find any basis to order an abatement. However, the board

wishes to comment on the Town's lack of supporting documentation of its assessment. Ideally the Town should have submitted sales for the board's consideration. 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 assessments in the municipality. See Appeal of NET Realty Holding Trust, 128 N.H. 795, 796 (1986). Lacking any recent and relevant sales information, the Town should have provided a detailed explanation of the basis of the land value contained in the assessment. The board is quite familiar that there are times when the municipalities are faced with a lack of comparable sales in a certain area of town. However assessors still must perform their duty and must rely on some general market data or sales in other communities with properties with similar features. The Town submitted none of this general market information and should have.

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

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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. SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Ignatius MacLellan, Esq., Member

Certification

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Walter F. & Carol M. Wienzek, Taxpayers; and Jay L. Hodes, Esq., counsel for the Town of Merrimack.

Dated: July 31, 1995

Valeric B. Lanigan, Clerk

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