A. David and Karen B. Dufault

v.

Town of Hopkinton

Docket No.: 12374-91PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessments of $199,550 (land $64,400; buildings $135,150) on "Lot 42" and $10,700 on "Lot 43.". The Taxpayers also own, but did not appeal, seven other properties in the Town (some of these lots are in current use) with a combined assessments of $387,200. 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) the combined value of Lots 42 and 43 was high compared to other lot assessments in the neighborhood (The Taxpayers basically argued they only have one building lot, and the assessment should have been similar to the neighbors' assessments. The Taxpayers added up four neighboring land

assessments and then divided by four -- an averaging calculation.);

(2) there is wet areas on Lot 43; and

(3) the land assessment should be $67,000 to $69,000;

The Town argued the assessment was proper because:

(1) the lots were correctly and consistently assessed as separate lots;

(2) the assessments were consistent with other neighboring lots; and

(3) adequate adjustments were made to the land assessments.

Board's Rulings

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

Much of the time was spent discussing whether Lots 42 and 43 should have been assessed as one lot. There was conflicting evidence and arguments on this issue. The board finds it is unnecessary to decide this issue now. We have, however, concluded from a value standpoint, the lots were not overassessed.

The board must review the property's value as a whole. The Taxpayers only presented arguments on the land assessments. The Taxpayers did not present any credible evidence of the property's fair market value as a whole. 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 Taxpayers' other argument -- that the land assessments should have been in line with other neighboring lots -- fails on its own merits because it involved simple averaging. Averaging land assessments, as done by the Taxpayers, does not necessarily prove "disproportionality"; it only proves that the Taxpayers' land was assessed more than the average property. Assessments are not averages; rather they are the correlation of general data to the unique characteristics of a specific property.

Here, the Taxpayers asked for a $67,000 - $69,000 land assessment, but that request did not analyze differences in lot sizes and other factors. Note: the other lots, except for one, were considerably smaller than the Taxpayers' Lots 42 and 43.

The Town testified the assessments were 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). Further, the Town demonstrated consistent assessments in the neighborhood.

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

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 A. David and Karen B. Dufault, Taxpayers; Mary E. Pinkham-Langer, Agent for the Town of Hopkinton; and Chairman, Selectmen of Hopkinton.

Dated:December 13, 1994 _____
Valerie B. Lanigan, Clerk

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