

Karen B. Dufault

v.

Town of Hopkinton

Docket No.: 12375-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$105,400 (land, \$74,750; building, \$30,650) on Map 207, Lot 56 consisting of a seasonal camp on 2.3 acres (the Property). The Taxpayer also owns but did not appeal Lots 36 and 44 which are in current use. The Taxpayer 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 Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer 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 Taxpayer failed to carry this burden.

The Taxpayer argued the assessment was excessive because:

1) the front-foot value is too high based on the steepness of the lot and a neighbor was assessed a lower front-foot value;

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- 2) two easements and a parking area to the beach right in front of the camp affect the Property's value; and
- 3) the camp is overassessed as it is only seasonal, has a dirt floor in the cellar and has no heat.

The Town argued the assessment was proper because:

- 1) abutting lots are assessed the same front-foot value as the Taxpayer;
- 2) the Taxpayer's comparable sold in October, 1991 for \$144,950 and does not have a clear view and access to the beach area;
- 3) a comparable sale in the proximity of the subject supports the assessment;
- 4) an adjustment has been made for lack of heat and for the quality and layout of the camp; and
- 5) the adjusted assessment made during the reviews is appropriate.

Board Findings

Based on the evidence, the board finds the Taxpayer failed to prove the Property was disproportionately assessed. We also find the Town supported the assessment for the following reasons:

- 1) the sale of lot 53 for \$184,000 in January, 1990 located in the same proximity to the beach as the subject, and the sale of lot 35 for \$144,950 in December, 1991, with only a partial view and beach rights, support the Town's assessment;
- 2) the Town adequately adjusted the land assessment for the topography of the lot;
- 3) the Town testified the Property's assessment was arrived at using the same

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methodology used in assessing other properties in the Town. This testimony is evidence of proportionality. See Bedford Development Company v. Town of

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Bedford, 122 N.H. 187, 189-90 (1982); and

4) the Taxpayer argued that the camp was overassessed but offered no credible evidence of the Property's fair market value. To carry this burden, the Taxpayer 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.

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

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Karen B. Dufault, Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: April 26, 1994

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order responds to the Taxpayer's request for rehearing. The board denies the rehearing request but amends page 1 of its decision as follows:

"...On Map 208, Lot 56 consisting of a seasonal camp on 1.3 acres
(the Property)."

The Taxpayer correctly noted that the decision misstates the map and lot number and size of the Property. The board based its decision on a 1.3 acre lot with a seasonal camp and finds that the errors in the decision were typographical.

The Taxpayer's request for rehearing is denied for the following reasons:

- 1) The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.
- 2) The Taxpayer argued that the easements and the parking lot to the beach

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directly in front of and encroaching on the Property affect its market value; however, the Taxpayer offered no market evidence of what effect those factors have on the Property's value.

3) The Taxpayer did not submit any photos of the Property or the comparables to support their differences.

4) The Taxpayer compared the Property to Lot 55 -- the board finds the Town may have placed too much emphasis on the narrow rear line of the lot and the lot may in fact be underassessed. The underassessment of other properties does not prove the overassessment of the Taxpayer's Property. See Appeal of Michael D. Canata, Jr., 129 N.H. 399, 401 (1987). For the board to reduce the Taxpayer's 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.

5) The Taxpayer compared the Property to Lot 35 assessed at \$300 per front foot. The property sold in December, 1991 for \$144,950 and was assessed for \$150,500. 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.

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See Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985).

The Taxpayer offered no credible evidence of the Property's fair market value. The board based its decisions on the sale of lot 35 and lot 53 which sold in January, 1990 for \$184,000, and finds that the sales support the assessment.

Motion for rehearing denied.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Member

Michele E. LeBrun, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Karen B. Dufault, Taxpayer; and Chairman, Selectmen of Hopkinton.

Dated: June 10, 1994

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Valerie B. Lanigan, Clerk