

Daniel B. Prawdzik

v.

Town of Nelson

Docket No.: 12387-91PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$153,560 (land \$26,240; buildings \$127,320) on a 3.6-acre lot with a house (the Property). 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 and prove disproportionality .

The Taxpayer argued the assessment was excessive because:

(1) the deck is 14 years old, the basement cannot be finished due to the slope of the land, the house has inferior flooring (the floor joists were not replaced and are all undersized and made of soft wood), and there is only a

partial basement/crawlspace, yet the Town assessed the house as a Class 5;

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(2) the Property is 1/2 mile in from the Town road and the access, which is a shared-maintenance road, is up a steep hill with a spring at the top, making winter access, financing and insurance difficult;

(3) the Property was improved with a second story and the Town increased the assessment 4 times, yet the living space did not increase 4 times;

(4) the Taxpayer was penalized for having backup heating and hot water systems;

(5) an appraisal estimated a \$380,000 value on August 14, 1992;

(6) the house has not been occupied year round since 1991-92; and

(7) the Boger property has twice the land assessment because all of his land is usable, while only 1/3 of the Property is, and the Boger property has a superior waterfront, a level lot, a sandy beach, and easy access.

The Town adjusted the assessment from \$162,300 to \$153,560 to address the Taxpayer's concerns. The Town argued the adjusted assessment was proper because:

(1) the assessment already considered the lack of a full basement, and the Taxpayer uses his partial basement as a workshop and storage area;

(2) the deck may be old, but it is used and adds value to the Property;

(3) the Taxpayer replaced or repaired the inferior floor joists;

(4) while some of the Property's conditions are inferior to others, the Taxpayer's kitchen is superior than others, and properties will always have

differences;

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(5) the Property has twice as much land as the Boger property as well as superior western exposure, yet the Property's land assessment is half that of Boger's property; and

(6) the Taxpayer exaggerated the Property's alleged access problem because the residence is occupied and therefore accessible year round.

Board's Rulings

The Board notes the fact that the Taxpayer's appraiser uses as comparables, five waterfront lots, three on Spofford Lake (18 miles from the subject), one on Stone Pond in Dublin and another on Lake Monomonac in Rindge.

No comparables were used from the subject's Lake Nubanusit in Nelson. Only the Dublin sale was given a location adjustment. No pictures of comparables were included in the report. The subject had 3.6 acres while the comparables have .89 acres, .15 acres, .2 acres, 1.7 acres and 6.8 acres. The size adjustments appeared to be rather modest. The equalized assessed value of the 1991 assessment ($\$153,560 \div .39 = \$393,745$ [rounded]) falls within a reasonable range (4%) of the Taxpayer's appraised value estimate of \$380,000.

It is also noted that the Taxpayer's appraiser's time adjusted comparable three (November 12, 1991) shows an improving market.

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).

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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). However, the existing assessment process allocates the total value between land value and building value. (The board has not allocated the value between land and building, and the Town shall make this allocation in accordance with its assessing practices.)

As stated above, the focus of our inquiry is proportionality, requiring a review of the assessment to determine whether the Property is assessed at a higher level than the level generally prevailing. Appeal of Town of Sunapee, 126 N.H. at 219; Stevens v. City of Lebanon, 122 N.H. 29, 32 (1982). There is never one exact, precise or perfect assessment; rather, there is an acceptable range of values which, when adjusted to the Municipality's general level of assessment, represents a reasonable measure of one's tax burden. See Wise Shoe Co. v. Town of Exeter, 119 N.H. 700, 702 (1979).

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

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

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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

Ignatius MacLellan, Esq., Member

CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Daniel B. Prawdzik, Taxpayer; and the Chairman, Selectmen of Nelson.

Dated: August 5, 1994

Lynn M. Wheeler, Deputy Clerk

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