

Lester Allen and Claire Kurzban

v.

Town of Deerfield

Docket No.: 12468-91 PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1991 assessment of \$142,200 (land \$56,700; building \$85,500) on a 5.11-acre lot with a house (the Property). 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 201.04(e); 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) most of the Property is steep and ledge;
- 2) realtors estimated the land value between \$38,000 and \$42,000, and the last lot in the subdivision sold for \$35,000 with a foundation;
- 3) the abutting lots were listed for sale for \$32,500 and \$35,000; and

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4) a six-acre corner lot with highway access, well, and septic system was assessed for only \$49,400.

The Town argued the assessment was proper because:

- 1) the Property's proximity to Route 107 and the Town lakes resulted in a higher assessment;
- 2) the assessment was depreciated to address the Property's topography and access;
- 3) the Property's land assessment is well within range of comparable lots in the subdivision; and
- 4) the assessment was based on 1989-1990 sales used to establish the values for the 1990 revaluation.

Board's Rulings

Based on the evidence, the board finds the Taxpayers failed to prove the Property was disproportionately assessed.

The value of a subdivision lot with site work and amenities included is significantly greater than an unimproved house lot, which is otherwise comparable with respect to size and location.

The Taxpayers failed to indicate whether the lot, which sold for \$35,000 with a foundation on it in the same subdivision, was an "arm's length transaction" (i.e., not an auction, foreclosure, or bank sale; a sale between family members; or a sale where either buyer or seller were under pressure to act).

The Taxpayers argued the assessment should be reduced because the

market for the Property has been declining. Evidence of a declining market

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alone is not a basis for reducing an assessment no more than evidence of an appreciating market is a valid basis of increasing an assessment. The issue is proportionality. The Taxpayer needs to make a showing that the Property has changed in value to a greater extent than that indicated by the change in the general level of assessment in the Town as a whole to prove their Property is disproportionately assessed.

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.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Michele E. LeBrun, Member

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CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Lester Allen and Claire Kurzban, Taxpayers; and Chairman, Selectmen of Deerfield.

Dated: April 12, 1994

Lynn M. Wheeler, Deputy Clerk

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