

Ananta K. Gopalan

v.

Town of Hampton

Docket No.: 12811-92PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$184,900 (land \$58,000; buildings \$126,900) on a 14,300 square-foot 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 Town's abatement was much less than comparable properties' abatements;
- (2) similar properties in the same neighborhood have lower assessments;

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(3) the 1992 abatement was based on the 1991 assessment, and since the 1991 assessment was flawed, the 1992 abatement was also flawed;

(4) the Town's history of granting abatements on the Property supports that the appeal is justified;

(5) other properties made improvements and additions, yet the Town neglected to increase their assessments accordingly; and

(6) the Town compares the 1992 assessment to the 1989 revaluation assessment, yet even the 1989 assessment was abated.

The Town argued the assessment was proper because:

(1) the Property's assessment decreased \$46,300 since the 1989 revaluation, which is significantly higher than any abatement given to the Taxpayer's comparables;

(2) the Taxpayer added a heated sunroom in 1991, which increased the value;

(3) the assessment considered the loss of space because of the dormered roof;

(4) comparable sales supported the Property's assessment and the assessment was well within the range of comparable properties' assessments; and

(5) the assessment was based on an 11,395 square-foot lot when the lot is actually 14,300 square feet.

Board's Rulings

Based on the evidence, the board concludes the Taxpayer failed to prove overassessment.

The Taxpayer's evidence focused on assessment comparison and assessment histories rather than market sales. This board is required to review market

data and then to review how that market data correlates with the general level of assessment in the community. In 1992, the department of revenue
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administration determined the Town's equalization ratio was 100%. Therefore, the assessments should approximate market value. Under RSA 75:1, assessments are to be based on market value, and market value determinations are the best evidence.

The Taxpayer did not submit any market data, but the Town submitted three very good comparable properties. To carry her 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.

Based on our review of the Town's market data, we find the assessment was just and proportional.

Furthermore, concerning the Taxpayer's argument that other assessments were lower, we note that the Taxpayer's Property was not overassessed. However, even if other properties were underassessed, the Taxpayer still would not be entitled to a reduction. 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

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standard yardstick to determine proportionality, not just comparison to a few other similar properties. E.g., id.

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 thirty (30) 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

Ignatius MacLellan, Esq., Member

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CERTIFICATION

I hereby certify a copy of the foregoing decision has been mailed this date, postage prepaid, to Ananta K. Gopalan, Taxpayer; and Chairman, Selectmen of Hampton.

Dated: January 17, 1995

Lynn M. Wheeler, Deputy Clerk

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