

Philip A. and Jean M. Minichiello

v.

Town of Newton

Docket No.: 12812-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$110,900 (land, \$58,500; building, \$52,400) on 1.34 acres with building (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 203.09(a); Appeal of Town of Sunapee, 126 N.H. 214, 217 (1985). We find the Taxpayers failed to carry this burden.

The Taxpayers argued the assessment was excessive because errors existed on the property-record card, i.e., size and dimensions of lot which resulted in a lot size of 1.34 acres when in actuality it is only .68 acres.

The Taxpayers in their rebuttal stated:

- 1) a survey was done in December 1992 (copy submitted September 7, 1993);
- 2) there were many discrepancies between the entire plan and the tax map provided by the Town;
- 3) the map submitted by the Town (May, 1993 submitted with their brief) is different from the tax map used in the assessment process; and
- 4) based on the evidence provided by the deeds, maps and survey plan, it is apparent that a substantial portion of the land is in fact owned by the Town and should be corrected.

The Town argued the assessment was proper because:

- 1) according to Taxpayers' deeds, and abutters, the Town's mapper determined the Taxpayers are being assessed properly on 1.34 acres; and
- 2) the Town admits a need for a survey in this area of Town, however, most residents do not want to incur the cost.

Board Findings

Based on the evidence, which the board spent a considerable amount of time reviewing, the board finds the Taxpayers have not shown overassessment.

The Taxpayers' main argument involved the size of the lot. The board reviewed all of the information the Taxpayers submitted, and we conclude that information does not establish the lot size as asserted by the Taxpayers.

Furthermore, as will be discussed later, given the adjustments made on the assessment card, reducing the lot size as requested by the Taxpayers might not significantly affect the overall assessment. Finally, the Taxpayers did not present any market data to show overassessment.

Concerning the lot size, the board states the following.

1) The Taxpayers incorrectly assumed their deed description indicated a quadrangle. The deed is very vague, and the indicated directional courses do not necessarily indicate a quadrangle if an abutting property along which a course runs is not a straight line.

2) The Taxpayers incorrectly asserted the deed clearly does not show a course along Back Pond. The westerly course states, "by said pond and in swamp to land of Abrams ***." (Emphasis added.) This course could be read to run along the pond and also through the swamp. It does not, as the Taxpayers asserted, clearly indicate a course through the swamp only.

3) The survey submitted by the Taxpayers was not a survey of the Property, and thus could not be relied upon. A surveyor, in order to survey a parcel, must review the title history of that specific parcel and abutting parcels. The Property does not even abut the surveyed property.

4) Concerning the Taxpayers' enclosure #4, which was the deed to Abrams', the Taxpayers asserted showed the westerly boundary as only 200 feet, the board is unable to reach that same conclusion. The Abrams' deed describes 2 parcels owned by Noyes, and the Abrams' property runs 200 feet by one of those parcels and 50 feet by another one of those parcels. The Taxpayers did not indicate whether the Property included two parcels or only one.

5) Additionally, if the board accepted the configuration and size as asserted by the Taxpayers, it may not have made any difference in the assessment. We note that the property-record card states, "Large lot for area but much of it is swamp and unusable." Because of this condition, the assessor applied a -45% topography adjustment. Based on the information in

the file, if the land area were to be reduced, it would be, presumably, the swampy area, and thus, the topography adjustment would be adjusted accordingly.

The board attempted to recalculate the lot based on the Taxpayers' position. Using the assessor's manual, the land assessment, with the exception of the topography adjustment, which the board cannot determine, would have been as follows.

<u>Figured Frontage</u>	<u>Average Depth</u>	<u>Unit Price</u>	<u>Depth Adjustment</u>	<u>Front-foot Price</u>	<u>Base Value</u>
111	270	600	1.77	762	\$87,585
<u>Topography Adjustment</u>	<u>Excess Adjustment</u>	<u>Undeveloped Adjustment</u>	<u>Market Adjustment</u>	<u>Appraised Value</u>	
?	1.00	1.00	1.00	\$84,585 (with some	

topographical adj)

As the lot size changes, the figured frontage, the depth and the adjustments change. For example, in the assessment under appeal, there is an excess adjustment and an undeveloped adjustment, but if the lot were reconfigured, those adjustments would be eliminated. Thus, based on our review, we are unable to determine what effect, if any, a recalculation based on lot size would actually have on the adjustment.

Finally, the Taxpayers did not present any credible evidence of the Property's fair market value. To carry this 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. Page 5
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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 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

Ignatius MacLellan, Esq., Member

Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has been

mailed this date, postage prepaid, to Philip A. and Jean M. Minichiello, Taxpayers; and Chairman, Selectmen of Newton.

Dated: January 13, 1995

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayers'" February 8, 1995 rehearing motion, which is denied. The motion failed to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3. Further, concerning the new survey, the board notes that board rule TAX 201.37(e) (attached) prohibits the board from granting a rehearing motion to consider new evidence.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

MacLellan, Esq., Member

Ignatius

Michele E. LeBrun,

Member

CERTIFICATION

I hereby certify that a copy of the foregoing Order has been mailed this date, postage prepaid, to Philip A. and Jean M. Minichiello, Taxpayer; and Chairman, Selectmen of Newton.

Dated: February 28, 1995

Valerie B.

Lanigan, Clerk

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