

Maureen and Charles Bacon

v.

Town of Enfield

Docket No.: 12850-92PT

DECISION

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 adjusted assessment of \$231,700 (land, \$124,800; building, \$106,900) on .37 acres with building and attached garage (the Property). The Taxpayers and the Town originally waived a hearing and agreed to allow the board to decide the appeal on written submittals. During review of the case the board determined a hearing was needed and scheduled a hearing for March 8, 1995. 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:

1) waterfront property in general was overassessed by the Town during the 1990 reassessment, and, in particular, the Property is overassessed by approximately 20%;

- 2) errors exist on the property-record card, i.e., finished garage, lot dimensions;
- 3) an adjacent property (Map 44 Lot 12) sold 7/9/92 for \$81,000, yet it was assessed for \$187,800; further, Map 44 Lot 30 sold 7/16/92 for \$125,000 yet was assessed for \$212,000;
- 4) comparable properties were two to three times in size, and were assessed lower; and
- 5) the Property had a market value of approximately \$175,000 in 1992.

The Taxpayers in their rebuttal stated the following:

- 1) comparable Map 44, Lot 12 was not under duress and its use is and has been available for year-round occupancy; and
- 2) comparable Map 44 Lot 30 was a bonafide sale.

The Town argued the assessment was proper because:

- 1) based on a survey provided to the Town, the land value was adjusted to reflect the total area and the building value adjusted to address the space over the garage and the electric heat and slab foundation;
- 2) Taxpayers' comparable Map 44, Lot 12 was not an arm's-length transaction and is only seasonal and comparable Map 44, Lot 30 was an estate sale and unqualified;
- 3) the sale of Map 44 Lot 26 in Jan. 1993 for \$227,000 is quite comparable to the Property; and
- 4) the other waterfront assessments submitted by the Taxpayers are not comparable due to differences in topography, their ability to be developed or the utility of the lots or buildings.

Board Findings

Neither party challenged the Department of Revenue Administration's equalization ratio of 119% for the 1992 tax year for the Town of Enfield. Based on that ratio, the Property's equalized value is \$194,700 ($\$231,700 \div 1.19$).

The board finds the Taxpayers did not carry their burden and prove the assessment was excessive because:

- 1) the Town properly reviewed and corrected for the factors related to the building values (e.g., garage, slab, electric heat, etc.);
- 2) based on the evidence, sales of Map 44 Lot 12 and Map 44 Lot 30 were not shown to be market value transactions; Lot 12, while perhaps listed with a realtor, did not occur under normal conditions as evidenced by the buyer having to quiet title after the purchase; Lot 30 was transferred from an estate and, while neither party had details about the transfer, such sales are normally disregarded if other market transactions exist;
- 3) the Anderson (Map 44 Lot 26) and Gourley (Map 46 Lots 1 and 28) sales on Crystal Lake were market value transactions and support the Town's assessment; further, even the Newcomb and Riess sales submitted by the Taxpayers, if the Town's 1992 equalization ratio of 119% is considered and if adjusted for time (Reiss sale occurred in 1994), also generally support the assessment; and
- 4) the properties submitted by the Taxpayers to support their claim of disproportionate assessments are not comparable due to the differences detailed by the Town; the factors for which the Town adjusted these properties are ones the market commonly recognize, and the Town would have been remiss

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not to make adjustments similar to those that were made (See Paras v. City of Portsmouth, 115 N.H. 63, 67-68 (1975)).

The Taxpayers further stated their main concern was with the land portion of the assessment. However, 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).

Based on viewing the Property as a whole, reviewing the photographic evidence submitted by both parties and the market evidence discussed above, the board finds the assessment of \$231,700 to be reasonable and proportional.

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.

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SO ORDERED.

BOARD OF TAX AND LAND APPEALS

George Twigg, III, Chairman

Paul B. Franklin, Member

Certification

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to Maureen and Charles Bacon, Taxpayers; and Chairman, Selectmen of Enfield.

Dated: March 22, 1995

Melanie J. Ekstrom, Deputy Clerk

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ORDER

This order relates to the "Taxpayers'" rehearing motion. The motion fails to state any "good reason" or any issue of law or fact for granting a rehearing. See RSA 541:3.

Motion denied.

SO ORDERED.

BOARD OF TAX AND

LAND APPEALS

III, Chairman

George Twigg,

Franklin, Member

Paul B.

CERTIFICATION

I certify that copies of the within Order have this date been mailed, postage prepaid, to Maureen and Charles Bacon, Taxpayers; and Chairman, Selectmen of Enfield.

Melanie J.

Ekstrom, Deputy Clerk

Date: April 27, 1995

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