

David E. and Sandra L. Babson

v.

Town of Wilmot

Docket No.: 12851-92-PT

**DECISION**

The "Taxpayers" appeal, pursuant to RSA 76:16-a, the "Town's" 1992 assessment of \$283,700 (land, \$63,100; building, \$220,600) on 5.170 acres with a building and attached garage (the Property). The Taxpayers own, but did not appeal, Map 16, Lot 96 for \$68,300. 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 and prove disproportionality.

The Taxpayers argued the assessment was excessive because:

- 1) of incorrect measurements in square footage;
- 2) lack of appropriate comparable market data;

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- 3) an appraisal prepared by "The Stanhope Group" dated March 25, 1991 estimated a fair market value of \$254,000; and
- 4) an appraisal prepared by "Clancy" dated March 9, 1993 estimated a fair market value of \$235,000.

The Taxpayers in their rebuttal stated:

- 1) the Town failed to indicate the comparable which was assessed for \$289,655 had sold for \$190,000 in May, 1993 and had serious problems; and
- 2) the Town's response that all measurements were accurate since all other properties in Town were measured the same way is not valid.

The Town argued the assessment was proper because:

- 1) the Taxpayers' lot was purchased in March 1989 for \$63,000 prior to any extensive site development;
- 2) the Taxpayers' Property is superior with an exceptional view of Mount Kearsage;
- 3) the best evidence of market value of the subject Property were two sales (McAllister & Sullivan);
- 4) comparable properties indicated the consistency achieved in assessing properties throughout the Town;
- 5) the Taxpayers' appraisals are not valid, with respect to location, and not supported by any sales; and
- 6) the Taxpayers' Property was measured consistently in terms of description and procedure as all other properties throughout the Town and the Taxpayers have failed to show any significant errors in the physical condition and has

failed to prove any disproportionality.

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### Board Findings

The Board recognizes different methods of measurement can be used to account for the number of square feet (internal/external) in a given area. As long as a given method is used consistently throughout the Town, no inequity results. Taxpayers' measurements appear to be internal dimensions, while the Town's are external.

The assessed value of \$283,700 when equalized by the Town's 1992 equalization ratio of 1.10 indicates a market value of \$257,900 ( $\$283,700 \div 1.10$ ). The Taxpayers' 1991 and 1993 appraisals estimate slightly lower values of \$254,000 and \$235,000 respectively. While the Board gives those appraisals some weight, we find they are not conclusive evidence of market value for the following reasons:

1) Four of six sales used in the Taxpayers' appraisals were "out of town," which makes comparison significantly less reliable, given the substantial view from the Property and other additional variables; for example, Grantham has a much lower tax rate which can significantly affect market value; further an inferior location of a sale in Springfield was apparently offset by the size differential for land (50 acres contained in the sale compared with the Property's lot size of 5.17); and

2) the two appraisals were done for refinancing reasons which, based on the board's experience, can result in a conservative value.

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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The Taxpayers raised concerns about certain errors in the assessment. However, the Taxpayers did not show these errors resulted in disproportionality. "Justice does not require the correction of errors of valuation whose joint effect is not injurious to the appellants." Appeal of Town of Sunapee, 126 N.H. at 217, quoting Amoskeag Manufacturing Co. v. Manchester, 70 N.H. 200, 205 (1899).

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).

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

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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

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George Twigg, III, Chairman

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Paul B. Franklin, Member

CERTIFICATION

I hereby certify that a copy of the foregoing decision has been mailed this date, postage prepaid, to David E. and Sandra L. Babson, Taxpayers; and the Chairman, Selectmen of Wilmot.

Dated: January 13, 1995

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Melanie J. Ekstrom, Deputy Clerk